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ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯ
ಮುಕ್ತಗಂಗೋತ್ರಿ, ಮೈಸೂರು - 570 006



**KARNATAKA STATE
OPEN UNIVERSITY**
MUKTHA GANGOTRI, MYSORE-570006

M.Com (Final)



COURSE-8

BLOCK:1-6

LABOUR LEGISLATION

**DEPARTMENT OF STUDIES AND RESEARCH
IN COMMERCE**

KSOU NATIONAL INTERNATIONAL RECOGNITION



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PREFACE

Dear Student,

As you know the men working in the organisation were treated as commodity before independence, leaving conditions of employees in the organisation were very dismal, as such employees here illtreated. There were no regulations to govern working conditions, therefore employers went on exploiting the employees. Mahathma Gandhi philosophy on employer employee relationship deleneats, trusteeship, non violance and truthful. Government of India brings out various legislations to protect the interest of workers, Factories Act, Payment of Wages Act, Payment of Bonus Act, Maternity Act, Trade Union Act, Dispute Act, Workmen Compensation Act, Employees State Insurance Act, Minimum Wages Act, Gratuity Act, Employees Providend Fund Act, Standing Orders Act, etc. could provide better working conditions for the employees, so as to enable them to lead better life in the society.

As a student of M.Com (Final), you have the opportunity of studying various legislations relating to employees. The study material developed by the experts will give you an insight into the paper. You may refer suggested reading material to enhance the competency. Feel free to write to the Department for further improvement of the study material.

With best wishes

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SYLLABUS

COURSE-VIII

LABOUR LEGISLATION

BLOCK-1 Introduction:

The general survey of labour legislation –History of labour legislation – after world war-I, Pre Independence and Post Independence period-Need, objectives and principles of labour legislation, administrative dimension of labour legislation.

BLOCK-2 Working conditions:

Factories Act – Objectives and main features.

BLOCK – 3 Wages:

Objective and main features of Payment of Wages Act 1936, Minimum Wages Act 1948, Payment of Bonus Act 1965.

BLOCK – 4 Social Security:

Workmen's Compensation Act 1923, ESI Act 1948, EPF Act 1952, Payment of Gratuity Act 1972, Maternity Benefit Act 1961.

BLOCK – 5 Industrial Relations And Workers Organisation:

Industrial Employment Act 1946, Industrial Disputes Act 1947, Trade Union Act 1926.

BLOCK – 6 International Labour Organisation:

Legislative Powers of Union and State Governments in Labour Matters – Influence of ILO on Indian Labour Legislation.

Suggested Books:

1. N.D. Kapoor – Elements of Industrial Law.
2. P.C. Tripathi and B.C Gupta – Industrial Relations and Labour Legislation.
3. Kapoor and Tripathi – Industrial Law and Practice
4. Krishna Murthy – Labour Law
5. S.C. Srivastava – Industrial Relations and Labour Laws.
6. A.M. Sharma – Aspects of Labour welfare and social security
7. Dr. Bhagoliwala – Economics of Labour and Industrial Relations.



M.Com (Final)
Course – VIII
LABOUR LEGISLATION

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UNIT I: GENERAL SURVEY OF LABOUR LEGISLATION

Structure

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Historical Background
- 1.3 Pre Independent Period
- 1.4 Post Independent Period
- 1.5 Indian Contribution and Labour Policy
- 1.6 Let us sum up
- 1.7 Terminal Questions and Learning Activities
- 1.8 Books for Reference

1.0 OBJECTIVES

After studying this unit you will be able to

- Explain the historical background of labour legislation.
 - Describe the highlights of Indian constitution with regard to labour policy
-

1.1 INTRODUCTION

Human principles dominated the entire labour welfare legislation in the history of labour throughout the world. Labour legislation is a most dynamic institution in modern society. From a simple restraint on child labour in U.K. in 1881, labour legislation has become an important agency of the state for the regulation of working and living conditions of men and women throughout the world. The rapid development of labour legislation is an integral part of modern social legislation. From the stage of serf labour to the stage of free contract, labour legislation has traveled a long way. Every law tries to protect the interests of labour particularly after independence. Law also tries to protect the material conditions and labour from accidents.

When serf system was there to protect the interest of employers, modern labour legislation tries to protect the interest of labour in a modern industry with the growth of democracy, the forces of attention has been transferred from the employer to employees.

Modern legislation aims to achieve better health, greater safety shorter houses of work, higher standard of living. In spite of universality of labour legislation, yet local conditions play a dominant role in shaping the industrial legislation.

1.2 HISTORICAL BACKGROUND

In most of the countries labour legislation was a historical necessity. During the British period labour legislation aimed at protecting the master's interest. After independence the interest was turned to worker's rights to seem freedom of association but unfortunately rights have been granted but rights to resources have not been granted. The earliest law perhaps can be traced back to 1850 with the passing of the apprentices Act. This legislation was passed with the object of helping poor children to learn various trades and crafts. In 1853 fatal accidents act was passed to provide compensation to the family members of with new who lost their lives as a result of "actionable wrong". In 1857 Merchant Shipping Act was passed to help the seamen, particularly their health, accommodation etc.

Labour legislation will shape according to the economic and political structure of the country. On social side, the inhering gap between employer and employees in terms of economics and also working hours influenced the passing of labour legislation. In 1881 first factories act was passed to

regulate employment of children and protecting the children from hazardous work. Though it protected children did not give any relief to male and female workers. Most of the legislations were pro employers before independence. For e.g., Assam Labour Act 1859, Employers and Workmen's (Dispute Act) 1860 made workman liable for criminal penalties for any breach of contract. Thus these laws protected employers.

Over a period time some changes took place. For example, the amended Act of 1891 children and women were included up to 14 years and at the same time prohibited the employment of children and women between 8 PM and 5 AM. The 1881 Factories Act came into existence based on the deplorable situation that was existing in Bombay Textile Mills. Again Mullock commission reviewed 1881 Act and Mr. N.H. Lokshande succeeded in getting one day i.e., Sunday as a holiday. In 1907 the government of India appointed a committee to look into the labour problems and in 1911 a comprehensive law was passed which has made applicable to seasonal factories working for less than 4 months in a year. The hours of work for children was reduced to 6 hours and for adults it was fixed as 12 hours along with some provisions for health and safety for the workers.

1.3 PRE INDEPENDENCE PERIOD

The outbreak of the I World War 1914:

During 1914-18, the number of factories and employees were increased. In the mean while 1917 Russian Revolution contributed and influenced the labour legislations throughout the world and India was no exception. The unfortunate factor was wages did not increase in commensurate with the rising prices. In the same situation ILO came into existence in 1919 which is a land mark in the history of labour legislation. In fact it continues to dominant the labour legislations throughout the world even today. In India in 1920 workers formed an association called All India Trade Union. In 1922 the factories (Amendment) Act includes all the factories using power and employing not less than 20 persons.

In 1929 Royal Commission discussed in detail about health, efficiency, welfare, standard of living, conditions of hour and the relations between employer and employee. This commission submitted the report on March 14, 1931. After discussing the details it suggested the following enactments to the passed.

1. Payment of wages in time;
2. Minimum wage
3. Health insurance
4. Plantation Act

In the year 1934 the above legislations were accepted. The 1934 Act provides the working hours for children (between 12 and 15) were reduced from 6 hours to 5 hours and for women it was reduced from 11 hours to 10 hours. For the first time rest-sheds and excludes were provided in big establishments.

Between 1934-1938 various committees conducted detailed investigations with regard to housing facilities. In 1944 (Rege Committee was asked to go into the details of):

1. Working conditions
2. Welfare measures
3. Housing Policy
4. Rest and Recreation
5. Occupational diseases
6. Relief in case of old age and death
7. Creaches
8. Medical Aid
9. Washing and bathing facilities etc.

At the same the above committee emphasized the need to implement the same seriously.

In 1944 the grand charter of labour was adopted by ILO According to this charter labour is not a commodity and the labour is entitled for a fair deal in any programme. In fact today ILO dominates the labour legislation in the world .

1.4 POST INDEPENDENT PERIOD

In this period labour legislation acquired enormous attention from the government. It was not only the ambition of the government to improve the labour conditions but also to see the standard of living goes up. The labour welfare concept was both economic and social. The social concept covered physical, mental, moral and emotional well being. After independence state and trade unions gave a boost to the welfare of labour. Based on Rage committee's recommendations 1948 factories was passed which came to existence on 1st April 1949.

This Act covered all the factories employing 10 or more workers where power is used and 20 and more where power is not used and where a manufacturing process is carried on. The Act left to the state governments to implement or to extend the provisions to any premise under section 85 of the Act. Thereby it is very clear that state government must implement the law. This Act consists of:

1. Provisions of health
2. Provisions of safety
3. Provisions of welfare
4. Provisions of for employment of young person
5. Provisions of for labours of work for adults and children.
6. Provisions of for holidays
7. Provisions of for leave with wages.

1.5 INDIAN CONSTITUTION AND LABOUR POLICY

The Indian constitution democratized the labour legislation by incorporating fundamental and directive principles to achieve social order based on the principles of labour legislation namely justice, liberty, equality, and fraternity.

Directive principles quote “the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall form all the institutions of national life.

The constitution is having three lists:

- (1) The Union List - A covers participation at the international level and implementation of their recommendations.
- (2) The state list - Includes matters concerning to relief of the disabled and unemployables.
- (3) Concurrent list - It covers subjects like trade unions, labour disputes, P.F, workmen’s compensation, employer’s liability, old age pensions, social security, vocational and technical guidance and training. Etc.

Between 1951-56 Plantation Labour Act 1951, Mines Act 1952, Employees Provident Fund Act 1952 were passed. The state governments passed various laws regarding housing for industrial workers.

The constitution of India aims to achieve social, economic and political justice. The directive principles (Part IV) deals with wages, employment and social security of labour.

Let us try to understand some of the important articles of the Indian constitution.

Article 36 to 51 shows how the legislation and administration has to be done with regard to labour. Since they are directive principles and cannot be enforced in a court of law, the state governments, have taken them seriously while passing legislations.

Article 37: This Article says social, political and Economic guidance should be the guiding principle while enacting a legislation. The executives should implement the law. This provision helped the courts to decide the cases keeping the public interest in mind.

Article 39, 41, 43 and 44 deal with the questions of employment, conditions of work, social security, social welfare and conditions of work of all labours.

- (1) Employment Article 39 (a) along with a part of Article 41 and 46 have a direct relationship with regard to employment. Article 39(a) the state has to direct its policy towards securing the livelihood to all citizens equally. Article 41 - makes the government to make effective provision for securing the right to work within the limits of its economic policy.
- (2) Equality of wages: Article 39 (b) says that the state shall try to secure equal pay for equal work both for men and women.
- (3) Article 43 states that the state has to secure for all the workers living wage.
- (4) The minimum wages Act 1948 is an appropriate machinery for the fixation of minimum wages.
- (5) Social security: Article 41 provides a provision to secure public assistance in cases of
 - (a) Unemployment;
 - (b) Old age
 - (c) Sickness
 - (d) Disablement

with regard to social security, apart from workmen's compensation Act 1923, the following Acts are giving the benefits.

- (1) Sickness Benefit - ESI Act, Coal and Mica Welfare Fund Act, Plantation Labour Act
- (2) Maternity Benefit - ESI Act, Maternity Benefit Act, Plantation Labour Act.
- (3) Old age benefit - Employees provident fund and family pension Act 1952, the coal mines the provident fund and bonus act, the Assam tea plantation act.
- (4) Employment injury - Workmen's Compensation Act, ESI Act.
- (5) Unemployment-Industrial Dispute Act, Dock Worker's Regulation Act.

- (6) Personal injuries - Personnel injuries (compensation insurances) Act 1963 provides compensation to maximum employed in essential services, factories mines major ports etc.
- (7) Living wage and standard of life - Article 43, The state shall secure the living wage and a standard and life. To fill this gap (1965) bonus Act was passed. Also known as deferred wage. The 1936 payment of wages Act ensures that salary should be paid in due date without any unauthorized deductions.

Other two major committees:

R.K. Malviya committee - 1969 - This committee recommended on Welfare schemes. The national commission (1969) on labour also discussed welfare measures.

Gajendragadkar commission - 1969 - Also known as “National Commission on labour” which protect the labour. This commission introduced a chapter called” Labour Administration” Based on this today India has a very elaborate administration to administrate labour laws both at the centre and states level.

- Central Level - Labour Commissioner
 Provident Fund Commissioner
- State Level - Labour commissioner
 Inspector of factories

Both the central and state Governments have the powers over the concurrent list. Ultimately central law prevails. After 1947 the basic objectives of labour legislations are:

- 1) To achieve welfare
- 2) To bring equitable justice
- 3) To check concentration of Economic power
- 4) To bring industrial Democracy
- 5) To follow ILO’s policy
- 6) To increase standard of living and to improve wages, perquisites, housing, medical compensation and terms and conditions of employment.

1.6 LET US SUM UP

There is no uniformity in labour legislation in the country. But in toto all labour legislations aim at bringing social justice though proper implementation of statutory provisions. The Royal Commission, Malviya Committee, Gajadragadkar Commission, emphasized the need to improve the basic facilities to employees irrespective of the factories situated in the country.

In general the following benefits are being given:

- 1) Canteen facilities;
- 2) Lighting arrangement
- 3) Latrines and urinals
- 4) Spittoons
- 5) Washing facilities
- 6) Sitting arrangements
- 7) Rest rooms.

The State Government can appoint inspector to inspect records. On the whole the survey helps to know what exactly the law is and how the provisions have been implemented to improve the standards of labour. However, there is a need to improve matters in the context of new economic policy.

1.7 TERMINAL QUESTIONS

1. Give a general idea about labour legislation up to independence.
2. What factor have been covered by Royal commission on labour welfare
3. Give a summary absent labour legislation after independence.
4. What are the major provisions on Labour in Indian constitution.
5. What factors have emerged in Indian Labour Law after independence.
6. Write a brief note on Malviya Committee, Gajendragakar Committee.

1.8 BOOKS FOR REFERENCES

- 1) N.D. Kapoor - Elements of Industrial Law.
- 2) Kapoor and Tripathi - Industrial Law and Practice
- 3) Krishna Murthy - Labour Law
- 4) A.M. Sarma - Aspects of Labour Welfare and Social Security
- 5) Moorthy M - Principles of Labour Welfare.
- 6) Singh M.M. - Social Security and National Development.
- 7) Sonanikar. S.S. Implementation of Labour Enactments.
- 8) Five year plan documents/
- 9) Indian Labour Books
- 10) Vidhyanatha N. ILO Conventions and India

UNIT 2 : NEED, OBJECTIVES AND PRINCIPLES OF LABOUR LEGISLATION

Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Principles
- 2.3 Indian Law and Principles
- 2.4 Motives that prompted Employers to provide Welfare Measures
- 2.5 Let us Sum Up
- 2.6 Technical Question and Learning Activities
- 2.7 Books for Reference

2.0 OBJECTIVES

After studying this unit you will be able to:

- Explain the objectives of labour legislation
- Discuss the principles of labour legislation.

2.1 INTRODUCTION

The need for labour legislation in a developing country like India is all the more important since it aims to have rapid economic growth and social development. In 1931 Royal Commission emphasized the need for labour legislation to give some rights and privileges for labour class. A resolution was passed in 1931 (Karachi Convention) to have an organisation to create an economic life confirming the principles of social justice so that the labour can get a secured decent standard of living along with the principles of social justice. It was also felt that labour should have a right on resources, so that it will improve a living wage and improve the situations like conditions of work, hours of work, and a suitable machinery to settle the labour disputes, between employers and employees. The need was and also felt to protect against the economic consequences of oldage, sickness and unemployment. To improve the status of labour, the state felt the need to have a suitable legislation.

The Indian constitution also deliberately kept directives principles as a state policy where it emphasized the following.

Article 38: "The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life".

Article 39: The state shall, in particular direct its policy towards securing

- (a) That the citizens, men and women equally, have the right to an adequate means of livelihood.
- (b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
- (c) That the operation of the economic system do not result in concentration of wealth and means of production to the common detriment.
- (d) That there is equal pay for equal work for both men and women.
- (e) That the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength.

- (f) That childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41, 42 and Article 43 also give a picture about the basic tenants of the labour legislation.

The Planning commission also felt the need and observed that “In order to get the best out of a worker in the matter of production, working conditions require to be improved to a large extent”.

Labour legislation is a branch of law that applies to human problems in relation to industry. It is therefore necessary that labour should know the general principles of law, more so the industrialists should know about it so that they can fulfil the obligations set in our constitution. Since the object of labour legislation is to protect the labour from exploitation, the law is necessary to make provisions with regard to labour welfare - i.e., working conditions, health conditions, safety, security etc. Since labour legislation is basically concerned to socio economic factor it is necessary to have legislations. The rights and privileges of labour can be protected only through a piece of law. Basically it is the economic significance. (Article 41, 42, and 43 see unit 1 for more details) that forces the country to pass labour legislation. Problems of wages, industrial peace, strikes, lockouts, industrial housing, health, efficiency of labour and unemployment are the factors that forced the state to have labour legislation besides social reforms. Besides working hours, industrial fatigue, industrial hazards, sanitation, industrial diseases made the society to have legislation to improve the working conditions. Legislation is an attempt to solve the above problems. Most of the industrial problems cannot be solved by civil law, hence labour legislation is required. Therefore there is a need to have labour legislation.

2.2 OBJECTIVES

The objectives of welfare activities can be grouped into three groups.

- (1) Humanitarian - This object is to enable the workers to enjoy a fuller and richer life.
- (2) Economic - to improve the efficiency of workers.
- (3) To develop sense of responsibility - to develop a sense of responsibility and dignity. Through these objectives citizens will become worthy.
- (4) To develop labour welfare - that is to fulfil the future needs and aspirations of life.

2.3 PRINCIPLES

There is no universally recognized view on labour laws but they are based on the principle of social justice. It is also felt that human approach is a must towards problems and in fact it is also recognized by ILO principles. Although the protection of labour is the prime motive of labour legislation, yet achieving social welfare dominates the principle in passing labour laws. There are four principles namely social justice, social welfare, national economy and international solidarity.

(1) Social justice:

The guiding principle of labour legislation is the establishment of social justice between employers and workers. The lack of economic security made the workers to be inferior. It is this cause that made the government to have the principle of social justice. This is the reason why state took steps to equalize the status of workers with that of employees by granting freedom of association and the power of collective bargaining. Even the steps like mediation or arbitration in the case of industrial dispute is having a links of social justice.

Establishing equality in social relationship is one of the outstanding force in social evolution.

The first step in establishing social justice is to protect those who cannot protect themselves. For e.g., The state has undertaken legislative measures to protect women and children. The most important condition for equalizing industrial relationship between employers and workers is the abolition of servitude. Labour has passed through four stages (1) Slavery, (2) Surform, (3) Indenture (4) Free contract.

It was under free contract that the labour got full freedom and the right to bargain with his employer in an equal footing.

(2) Social Welfare:

This is yet another principle underlying labour principle. The principle of social welfare differs from that of social justice as the later preconceives of some standard of equity which must be extended to working classes through labour legislation, whereas the former does not necessarily recognize such a standard. Social welfare looks forward and contemplates a dynamic society. An ideal "Better Manwood" and "Better society" made the movement of labour legislation. Since the future of society depends on the physical and mental development of a child, child labour legislation together with protection of woman came into being. The development of physical and mental capabilities of child has become the prime concern of society and the most important principle of child labour legislation in modern times. The admission of children to industrial occupation has been made conditional upon a three fold requirement.

- (a) Minimum age;
- (b) Physical fitness
- (c) Elementary Education

Closely associated with the development of childhood is the question of protecting "Womanhood". Therefore state has passed many legislations concerning to women, and some of then are prohibiting women to work in hazardous jobs, working in neutral hours, maternity benefit Act etc. For this, benefits have been given to women in the form of restricted hours of work, avoiding women to work in the dangerous places or where the danger is imminent. With regard to physical and mental development of woman, free education, maternity benefit are some of the steps taken by law. Simultaneously, housing, health, recreation and cultural activities have been encouraged.

(3) National Economy:

Another principle of labour legislation is concern with National Economy. It has four fold concern.

- (a) First, the ensuring of normal growth of industry for the benefit of the nation;
- (b) Second, providing better working and living conditions
- (c) Third, adjusting the wage system to increase the purchasing power of workers.
- (d) Fourth, development of social insurance with a view to check misery like sickness, accident, invalidity, old age, premature death etc.

(4) International Solidarity:

This is yet another principle of labour legislation. It means the improvement of national labour conditions through ILO's conventions and recommendations. The active participation by India in the rise and growth of ILO has not only helped in the development of international solidarity but also influences India's Labour legislation.

2.4 INDIAN LAW AND PRINCIPLE

In India Labour law principles have largely developed out of ILO principles and conventions. In India most of the legislations have been passed based on the following principles.

- (1) Greatest facility principle of greatest happiness.
- (2) Maximum good to the maximum number of people
- (3) Labour is not a commodity
- (4) Freedom of expression and of association are essential to sustain progress.
- (5) Poverty anywhere is a danger to prosperity everywhere.

Nature has placed human kind under two masters concerning to his welfare, namely pain and pleasure. These two factors govern all we do. The principle of utility lays the foundation for law. Today this principle is generally known as greatest happiness principle. It is meaning less to speak about society without understanding the needs of individuals. In labour law it is not the sympathy that is required, but actual solutions. Since labour is not a commodity it is economic support that is required by passing a legislation. It should not be remembered that labour legislation is professing theological principle. Labour require freedom of expression and association, because it is only through participation one can ensure progress. For this only workers participation in management schemes were launched. It is a curse to live in poverty. That is why the logic has been put as "poverty anywhere is a danger to prosperity everywhere". Poverty can not be defined, and it should be experienced to understand poverty. Therefore, if management

is prospering without corresponding increase in labour economic status, then it is a danger to employers. This principle has been accepted by ILO. In the beginning the objective was policing and placating philosophy of labour welfare. But today it is paternalism with philanthropic objectives. The recent thinking in labour welfare is more towards increasing productivity and efficiency of labour.

By and large the principle in Indian labour law is "equity and social justice". The question of morality and integrity can be measured only when economic equality is brought about. In a country like India one needs a principle to share wealth. There is no point in having rights without access to resources. Today we have rights but have no rights to have access to resources. In industrial law everything is common except wealth. Therefore labour legislation has been formulated emphasizing bargaining power in the name "collective bargaining principle". In spite of many drawbacks in Indian labour legislation, it has provided the following benefits to labour.

- | | |
|------------------------|---|
| 1) Security of job; | 2) Social security |
| 3) Leave benefits | 4) Sickness benefit |
| 5) Maternity Benefit | 6) Compensation |
| 7) Gratuity | 8) ESI Benefit |
| 9) Disablement benefit | 10) Regulated hours of work |
| 11) Leisure time | 12) Recreation facilities |
| 13) Canteen facilities | 14) An opportunity to express through trade unions. |

To put it in nutshell the labour policy in India is as follows:

- 1) State is the custodian to protect labour
- 2) State recognized the right of workers for peaceful direct action
- 3) Encouragement of collective bargaining
- 4) Workers participation in Management
- 5) Fair wages and provision for social security
- 6) Adequate enforcement of labour legislation.

To achieve success in labour laws, the state must be in a position to implement. Unfortunately effective enforcement is lacking and many legislations have not seen the light at all. In India both central and state governments are passing labour legislations though a major work of implementing lies with the states. In fact our plans emphasized the role of labour administration in creating a better industrial climate.

2.5 MOTIVES

- (1) Some of the early philanthropic employers tried to try improve labour conditions by providing various labour welfare schemes.
- (2) Some of the employers wanted to win loyalty and to combat trade union activities and some of them had socialist ideas.
- (3) Some of the employers provided welfare services to build stable labour force.
- (4) Some of them provided facilities to reduce labour turnover and absenteeism and to promote labour relations.
- (5) Some of the employers thought them as good investment to secure efficiency and output.
- (6) Some of them provided welfare measures to save themselves from heavy taxes an surplus.
- (7) Some of them wanted to create good will between labour and management.
- (8) Of course recent thinking is improving productivity and efficiency of labour.

2.6 LET US SUM UP

The need and objectives of labour legislation should go together. The need is great to reduce poverty and the objective should be to improve the labour standards both in terms of economics and in terms of psychology. Any labour law should keep in mind the principle of social justice, besides keeping national and international solidarity. In a country like India where unemployment is rampant, there is a greater need for the state to play an active part. What is more important is implementing the legislations than mere passing the laws. Law alone is not the solution through it may provide some solutions to those people who are capable of going to challenge their rights. Unfortunately many have no economic back ground to challenge their rights though rights have been given under Indian constitution. Social order can be achieved only when social justice, political justice and economic justice is provided. Therefore the institutions that implements the law should be strengthened. The planning commission observed that, "In order to get the best out of a worker in the matter of production, working conditions have to be improved". This can be done only through a systematic labour legislations and their implementation.

2.7 TERMINAL QUESTIONS

- (1) Explain the need for labour legislation;
- (2) What are the major objectives of labour legislations
- (3) Point out some of the Articles of Indian constitution that is relevant to labour legislation.
- (4) What are the basic principles of labour legislation.
- (5) Do you think the principles of legislation that is in existence are enough. If not try to analyze any new points that may be in your mind.
- (6) Just discuss Indian law and labour principles.
- (7) What is the role of ILO in labour principles.

2.7 BOOKS FOR REFERENCES

1. Labour Law - Reshma Aria
2. Labour Welfare, Trade Unions and Industrial Relations - S.D. Panekar.
3. Mercantile Law and Industrial Law - M. Basavaraja & B.K. Hussain
4. Principles of Industrial Law - R.P. Maheshwari
5. Aspects of Labour Law and Social Security - A.M. Sarma
6. Elements of Industrial Law - N.D. Kapoor.

UNIT 3 : ADMINISTRATIVE DIMENSION OF LABOUR LEGISLATION

Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Central Machinery
- 3.3 Autonomous organization
- 3.4 Legislative powers
- 3.5 Administrative Dimensions
- 3.6 Summary
- 3.7 Technical Questions and Learning Activities
- 3.8 Books for References

3.0 OBJECTIVES

After studying this unit you will be able to;

- Explain the control machineries for labour administration.
 - Discuss various administrative dimensions.
-

3.1 INTRODUCTION

One of the greatest difficulties for the implementation agency is “Keeping social concept” in the labour law. Therefore, the implementing agencies both at the centre and at the state level should pursue a well defined strategy to implement the law. The well defined strategy should aim at promoting closer co-operation between employers and employees. Administrative machinery must maintain a dynamic outlook to discover new methods to match new duties and responsibilities that might arise from time to time. With regard to implementation of labour laws concerning to women, so far the law is only trying to protect the women against hazards involved in their employment rather than giving employment opportunities to them.

Though equal pay for equal work is generally accepted as a principle, yet there is considerable discrimination against women in the payment of wages. If labour law is implemented effectively it can certainly prevent any crises in the industrial world. The task of labour administration is not merely to see the compliance with legal provisions under various legislations, but it is necessary to exact the necessary conditions for following the provisions. Administrators many times may have to learn lessons from various counties or institutions to avoid unnecessary labour complications.

3.2 CENTRAL MACHINERY

At the central level, government of India set up a separate department of labour and allocated the following subjects for its jurisdiction and regulations on labour matters. Generally the following subjects are in the central control.

- | | |
|-------------------------|--|
| 1) Industrial relations | 2) Wages |
| 3) Employment | 4) Welfare of labour and social security |

The implementation of labour policy is the responsibility of the state, but most of the times it is under the control and direction of the central government. However, the central government is having exclusive rights on labour in Railways, mines, oil fields, Banking, Insurance, major posts etc.

Jurisdiction:

Since labour is in the concurrent list, in India both central and state governments make necessary laws and formulate policies. In some states better policies are there when compared to other states. In the Indian situation, if a state government implements a policy, the central government has no objection. In the general interest of the country if one ruling party is there both in the state and in the central it would be better. However, today in India a big conflict is there due to different political ideologies. Trade unions will formulate policies conducive to the government for Eg. Kerala and West Bengal.

When such conflicts, arise central government will become ineffective in administering the labour laws. But one plus point under such situations is the central government may take liberal attitude.

The department of labour is responsible to administer the law. In fact the department of labour implements ESI Act, 1948. Employees provident Fund Act 1952. The department also acts as an agency to implement the activities of ILO and the International social security association. This department has 4 attached officers, 2 subordinate offices, and 7 autonomous organizations.

Four Attached offices:

- (1) The Directorate general of employment and training is responsible for laying down the policies, procedures, standards and overall coordination of employment service procedures and vocational training programmes throughout the country. It also regulates the recruitment of skilled, semiskilled and unskilled workers for employment abroad.
- (2) The chief labour commissioner (Central) is responsible for the implementation of labour laws in the industries controlled by central government.
- (3) The Directorate General of factory advice service and labour institute. It is concerned with safety, health, and welfare of workers in factories and docks. Docks act was passed in 1934. It is also responsible for coordinating and to formulate the model rules under the Act.
- (4) The Directorate of labour bearew is also responsible for collection and publication of statistical and other information on employment, wages, industrial disputes etc. This department who compiles and publishes consumer price index number for industrial and agricultural workers.

Two subordinate offices:

1. Directorate General of Mines Safety:

It enforces the provisions of the Mines Act 1952 and the rules and regulations framed under it. It also administers the mines maternity benefit rules in respect of Non-coal mines

2. Welfare Fund Organizations:

It generally looks after coal, iron, manganese ore, mica and beedi industries to promote labour welfare.

3.3 AUTONOMOUS ORGANIZATIONS

- (1) ESI Act 1948: Responsible for the implementation of Medical care and cash benefit in cases of sickness, maternity and employment injury.
- (2) EPF Organisation: Deals with provident funds, family pension and deposit linked insurance.
- (3) The central coal mines rescue stations committee - deals with the responsibility of establishment, maintenance and proper functioning of the rescue stations.
- (4) The National council for safety in mines - to educate the workers working in mines.
- (5) The National Safety Council - promotes safety in factories.
- (6) The central Board of Workers Education - Trains workers and educate their rights and duties.
- (7) The National Labour Institute - conducts research on industrial relations, personnel management, labour welfare etc.

3.4 LEGISLATIVE POWERS

After independence labour legislation is more or less pro labour and imposes obligations on employer. The obligations are (1) Conditions of services (2) Working conditions; (3) Wages, (4) Welfare facilities (5) Safety measures; (6) Notification of vacancies, (7) Training of apprentices, (8) Institutions to social security measures.

Implementation of these obligations rests with the employers. Understandably the government supports the cause because in India we still lack enlightened employers and organized trade unions. For discipline purpose tripartite agreement were made. At the state level labour commissioners are being supported by Deputy Labour Commissioners, or Assistant Labour Commissioners. Most states have appointed chief inspectors of factories. The labour inspectorate and the industrial relations machinery are under the respective labour commissioners. The labour judiciary consists of labour courts, industrial tribunals the implementation part was left to the state governments but subject to central control. The state governments are responsible to implement most of the welfare legislations. The industrial relations machinery does the following functions:

- 1) Prevention and settlement of industrial disputes in:
 - a) Mines
 - b) Oil fields
 - c) Major posts

- d) Banking and insurance companies having branches in more than one state.
- e) Industries carried on by or under the authority of the central government.

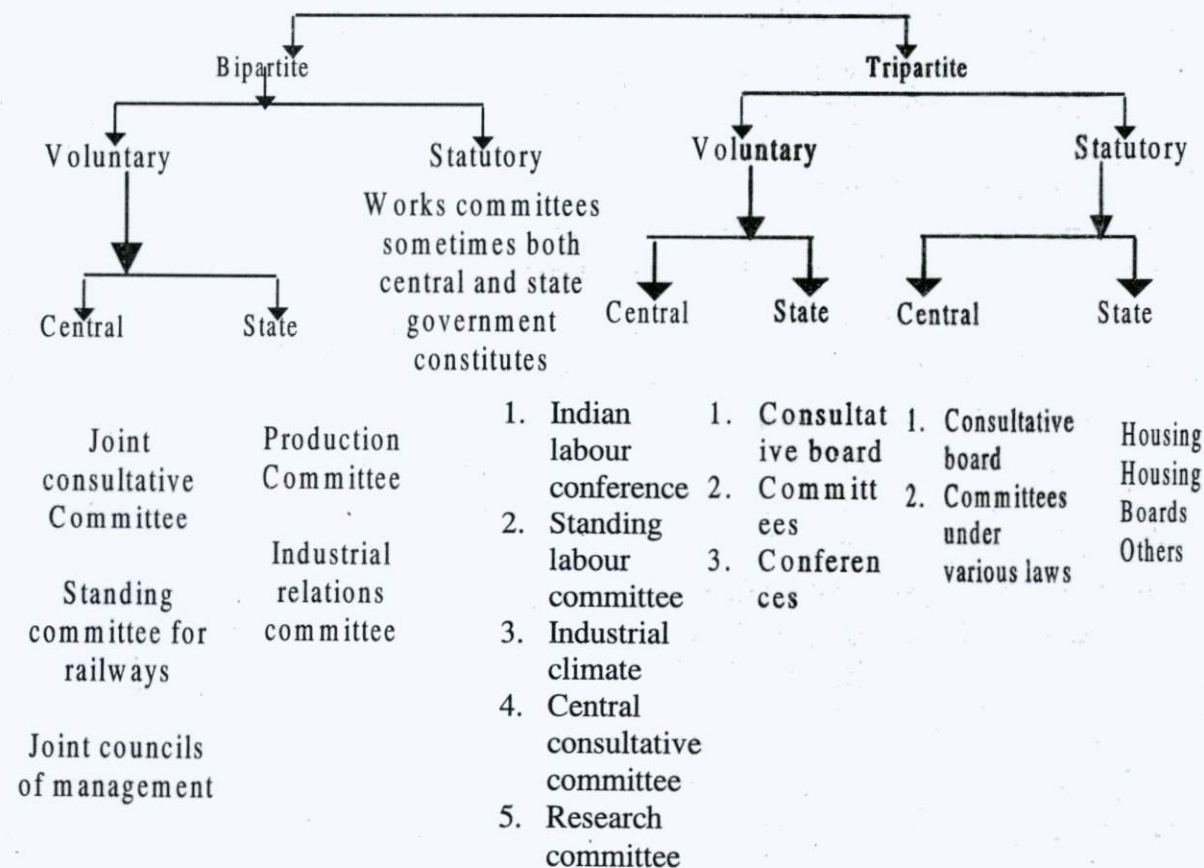
Labour commissioners are also having some quasi jurisdictional functions. Such as certification of standing orders, dealing legality or otherwise of strikes, lockouts etc.

3.5 ADMINISTRATIVE DIMENSIONS

The Trade Unions should play a catalyst role to ensure proper implementation and enforcement of labour legislation through their active participation. The same view was expressed in a seminar held at Sri. Ram centre for Industrial Relations New Delhi, some years ago. This has put the dimensions of Labour Law in the following way:

“The trade unions can be watch dogs for the implementation of labour laws and accordingly it might be desirable to develop suitable organizational structure for co-ordinating the interests of trade union with those of governmental machinery”.

Labour Powers of Union and States on Labour Matters



In the matter of public sector undertakings annual review should be done by state labour commissioners in co-operation with general manager. Trade union representatives may also be associated. To set up industrial relations, joint councils, joint management labour committees, disputes settlement machinery etc. have been set up. The trade unions should acquire the following qualifications to become delighted to play a great role in the process of industrial development.

- (1) Sound internal organization
- (2) Adequacy of financial resources
- (3) Sound leadership and objectives.

To improve the administrative machinery the government should come forward with a scheme to improve the labour management relations.

3.6 SUMMARY

Administrative dimensions of labour legislation largely depends on the type of trade unions that the country is having. In wages there is still a big gap between men and women in place of work. By and large the labour machinery in this country is fairly well developed. Further a clear cut demarcation has been made between states and central government with regard to labour administration. A specific number of autonomous institutions/ organizations have been set up to solve many problems. Legislative powers have also been made in an understandable way.

3.7 TERMINAL QUESTIONS

- (1) Write a brief note on administrative Dimensions on Labour Legislation;
- (2) Discuss how the central machinery works?
- (3) Mention the names of Autonomous organizations and their functions.

3.8 BOOKS FOR REFERENCES

- (1) Labour Law - Reshma Arora
- (2) Meanwhile Law and Industrial Law - B.K. Hussian
- (3) Principles of Industrial Law - R.P. Maheswari
- (4) Industrial Law - P.L. Mallick
- (5) Aspect of Labour Law and Social Security - A.M. Sarma
- (6) Elements of Industrial Law - N.D. Kapoor
- (7) Indian Institution.

BLOCK - II :

UNIT 4 : THE FACTORIES ACT 1948

Structure

- 4.0 Objectives
- 4.1 Background of the Factories Act
- 4.2 Statutory Development
- 4.3 Why a separate factories Act?
- 4.4 Salient features of the factories Act
- 4.5 Few Important definitions
- 4.6 Approval, Licensing and Registration of Factories
- 4.7 Provisions relating to health
- 4.8 Let us sum up
- 4.9 Key terms
- 4.10 Questions
- 4.11 Suggested Readings

4.0 OBJECTIVES

After studying this unit, you *will* be able to know:

- The Factories Act with its necessity, need and salient features
- Few Important definitions
- Approval, Licensing and Registration of factories
- Provisions relating to Health
- Powers of the state Government to make rules.

4.1 BACKGROUND OF THE FACTORIES ACT

The beginning of modern industrialization led towards the problem of labour. Till the end of 19th Century there was no control of the state over the conditions of employment. Labour was then considered as a commodity and disposable at the mercy of the employers. The first ever- protective labour legislation enacted was the Factories Act in 1881. The 1881 Act gave a limited measure of protection to children and contained provisions for fencing some dangerous parts of machinery. This enactment provided for the Government intervention in industrial matters.

In India you will find largest number of labour legislations. Indian judiciary has contributed a lot for the development of the basic principles of labour jurisprudence. The labour laws as such are not exhaustive. The development of labour jurisprudence is the result and outcome of the need for social and economic justice to the working class.

International law has also shown concern to protect the rights of the working class. The International Labour organization, the first specialized institution came into existence in 1946. Today it is the standard setting body in social and labour questions. Under the ILO various conventions and recommendations laying down international standards for improving labour conditions have come.

4.2 STATUTORY DEVELOPMENT

As observed above, the factories Act marked the beginning of protective labour.

Legislations in India. The 1881 Act has been amended on many occasions in 1934; the Factories Act 1934 was passed replacing all previous legislations based on the recommendations of the Royal commission on Labour. The 1934 Act also proved defective and inefficient and underwent several amendments, As a result a new Act viz The Factories Act 1948 was enacted consolidating and amending the law relating to labour in factories.

Apart from the Factories Act, there are other statutes governing labour. To cite a few of them, the equal remuneration Act; Bonded labour Abolition Act; Industrial disputes Act 1947; The Workmen's Compensation Act 1923; The Employee's state Insurance Act 1948; The Employee's Provident Funds Act 1952; the payment of wages Act 1936; etc., The supreme law of the land viz., the Constitution of India has guaranteed Fundamental Rights including right to j practice any trade, profession or business. The Directive : principles of state policy have cast a duty upon the state to protect labourers. The Indian Penal Code also contains provisions for protecting the labourers and punishment for breach of contract or conditions. The factories Act itself provides for penalties and punishments for violation of its provisions (Sec 92). To put together all these laws make the worker stronger.

4.3 WHY A SEPARATE FACTORIES ACT?

A general question. *may* arise in the minds of a student as to why a separate statute was enacted when there are other statutes relating to the same. The Answer is clear. Though the statutes mentioned above provides for protection of labourers, they do not comprehensively cover the finer aspects of a manufacturing process involved in factories, the need for protection from hazardous process and the like. Moreover there was a great necessity to define technical terms and the conditions of work in clear and unambiguous terms. Though the first Factories Act was enacted in 1881, it proved defective in working. The effective administration of the Act was hampered and there was a greater need to consolidate and amend it. Hence the now Factories Act was enacted in 1948 comprehensively covering each and every aspect of a factory.

4.4 SALIENT FEATURES OF THE FACTORIES ACT

This Act exclusively deals with the rules governing a Factory, registration and License for working of factories, regular inspections, and conditions of work or labour for men, women and young workers. Provisions for adequate I safety and welfare of workers, responsibilities of the i occupier, regulation of working hours and annual leave with wages. The Act provides for compulsory registration and licensing of factories. The minimum age for employing children is 14 years and the permissible daily hours of work is four and half hours. The Act also restricts the employment of children and women between 7 PM and 6 AM. The workers are entitled to double their normal wages for overtime work. The Act imposes greater responsibility on the occupier and makes him liable for Penal action for *r* violation of its provisions.

4.5 FEW IMPORTANT DEFINITIONS

It is necessary to understand the meaning of few concepts as defined under the Act. Note that the meaning of the words as given in the definition shall be the same throughout.

(a) Manufacturing process:

Manufacturing process is defined in section 2(K) of the factories Act.

“Manufacturing Process” means

- (i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, clearing breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to use, sale transport, delivery or disposal; or
- (ii) Pumping oil, water, sewage or any other substance; or
- (iii) Generating, transforming power, or transmitting power; or
- (iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or
- (v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or nestles; or
- (vi) Preserving or storing any article in cold storage.

The above definition is not exhaustive. The judiciary has from time to time expanded this definition. There is no standard formula to determine what is or what is not a manufacturing process.

The courts have held the following to be manufacturing process: -

The making of bidi, decorticating groundnuts, ironing cloths with the aid of power, stitching of gunny bags, packing of coconuts in bags for transportation, work of washing, peeling and cleaning of prawns, preparation of salt from sea water, transmission of electrical energy and imparting technical education to students with power generating machines simultaneously.

It would be worthwhile to trace the decisions of the Courts in expanding the term manufacturing process.

In *V.P.Gopala Rao V Public prosecutor, AP.*, (1970 Lab IC 56), the Supreme Court has held that the definition of manufacturing process is widely worded. The moistening of tobacco leaves, stalks stripped by breaking, packing and bundling them for use and transport essentially constitute a manufacturing process.

Similarly in *New Taj Nahal Cafe Ltd., Nangalore V Inspector of Factories, Mangalore* (1956) 1 LLJ 273) the preparation of foodstuffs and other eatable in the kitchen of a restaurant and use of a refrigerator for treating or adapting any article with a view to its sale were also held to be manufacturing process.

In *Gujarath Electricity Board V state of Gujrath and another* [(1984) 2 LLJ 370 (Guj)] the court held that conversion of high voltage into low voltage and distribution of electricity does not amount to manufacturing process, as the definition does not envisage the generation of power.

It is to submit that the liberal interpretation given by the Court suggests that the benefit of the statute shall go to the worker.

(b) Worker

Worker means a person employed, directly or by or through any agency (including a Contractor) with or without the knowledge of the principal employer in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the union.

It is clear from the above definition that the term “worker” includes all employees who are engaged in work. It is not necessary that they work for salary or remuneration. Even gratuitous service amounts to work. The work need not necessarily be directed by the employer himself. The only criteria to determine whether a person is a “Worker” is to see if he has done any service, however trivial it may be. The definition expressly excludes the members of armed forces.

(c) Factory

Factory means any premises including the precincts thereof: -

- (i) Wherein ten or more workers are working, or were working on any day of the preceeding twelve months and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or
- (ii) Whereon twenty or more workers are working or were working on any of the preceeding twelve months and any part of which a manufacturing process is, being, carried on without the aid of power, or is ordinarily so carried on.

Factory does not include a mine subject to the operation of the Mines Act 1952 or a mobile unit belonging to the armed force of the union, a railway-running shed or Hotel, restaurant or eating-place.

On the other hand The Industrial Disputes Act, 1947 defines an Industry (Sec 2 (j)) as any business, trade, undertaking, manufacture or calling of employees and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen, Industry includes a Municipal corporation & a Hospital.

The term ‘factory’ used in the factories Act is more wider. To arrive at a conclusion whether a particular establishment is a factory or not, it must first be verified whether their undertakings amounts to a manufacturing process or related to it. If yes, the establishment is a factory. All industrial establishments employing ten or more workers where power is used and 20 or more workers in others are factories. The 1948 Act has abolished the distinction between seasonal and non-seasonal factories. Now we can study the judicial approach in this regard In employees’ state Insurance corporation V Jalandhar khana

Club [1993] ILLJ477 [P&H] the preparation of *food* and drinks in kitchen attached to the club and the preservation and storing of articles in cold storage were held to be a manufacturing process and so the premises of the club is a factory within the definition of section.

Again in *Graner & well (India) Ltd V. Collector of central excise, Boloda* (1995) 2 Lab LJ 648 (SC) the court concluded that the term any premises including the precincts thereof' in wide enough to include all buildings earth the surroundings which form part of one unit. The chromic acid section situated in the same plot of land manufacturing sodium & potassium dichromate in another building was held to be a factory.

(d) Occupier- (Section 2 (1) (n))

Occupier means the person who has ultimate Control over the Affairs of the factory. 'Where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier. In case of a firm or association, one individual partner or member is deemed to be the occupier. In case of a company, occupier would be anyone of the directors. In case of a factory owned or controlled by the central Government or any State Government, or any other local authority, it is the person appointed to manage the affairs to be deemed occupier. In case of a ship at repairs, the dock owner and in other cases the owner of the ship or his agent or master or officer-in charge of the ship is deemed to be the occupier.

It is very important to identify the occupier of a factory. Occupier has the entire control of a factory. Through he is not the owner, he is presumed to be the owner. The occupier is identified in the definition for the sole purpose of fixing the liability for the purpose of the Act. Further it is the occupier who has to apply for license and permission to the state Government or the chief inspector of factories.

4.6 APPROVAL, LICENSING AND REGISTRATION OF FACTORIES

Before establishing a factory, prior permission from The state government is required. section 6 of the Act confers rule-making powers upon the Government. The occupier of the factory must submit the application for permission before the state Government or the chief Inspector of factories. The application must be accompanied by the plans and specification. The application may be sent by registered post. If the applicant does not receive any order within three months, the permission is deemed to have been granted. If the permission is refused, the applicant may appeal to the Central Government within thirty days of such refusal.

4.7 PROVISIONS ON HEALTH

There is a very old saying "Health is Wealth".

Health is very precious, Only a healthy person can work to his optimum level. The health workman is the backbone of an industry and ensures good production. Hence the Act stresses on various health

aspects in a factory. workers may be exposed to health hazards in certain spheres, Safe working conditions, cleanliness and suitable environment safeguards the health of workers and protects them from J occupational di5ea5e5. The health provision5 incorporated in the Act is based on "Prevention is better than cure" principle. Section 11 to 20 deal with provisions of Health. , It is very important to note that the Law maker5 have maximum care in prescribing Health standards. If an I employers takes adequate care in incorporating these ! prescription, perhaps that factory situation may be ident one.

The Act deals with the following aspects:

- Cleanline55 (Sec-11)
- Proposal of waste and effluents (Sec-12)
- Ventilation and Temperature (Sec-13)
- Dust and fume (Sec-14)
- Artificial humidification (Sec-15)
- Over crowding (Sec-16) .Lighting (Sec-17)
- Drinking water (Sec-18)
- Latrines and Urinals (Sec-19)
- Spittoons (Sec-20)

Let us dissents one by one in little detail.

(a) Cleanliness

Mahatma Gandhi said cleanliness is Godliness The Act stresses on cleanliness under the Act, every factory must be kept clean and free from effluvie arising from any drain, privy or other nuisance.

Precaution to be taken are removal of accumulated dirt and refuse, by daily swee~i~ng or by other effective method from the floors and benches of workmen staircases and passages and its disposal; cleaning of floor of every workman at least once in every week by washing, using disinfectant, or other effective method; where a floor is liable to become wet in course of any manufacturing procers, effective means of drainages to be provided; painting of all inside walls and partitions, ceilings or tops of rooms and walls, to be done once in at least 3 years and washed every 6 months.

(b) Wastes and effluents-

The state Government is empowered to make rules for making effective arrangements for disposal of wastes and effluents, the effluents arising out of manufacturing process must be rendered innocuous for there disposal. This has got direct environmental effects. If effluents are not properly treatid and dispased off, the environmental pollution Board will take action. There is a danger in side and people outside, do suffer.

(c) Ventilation and Temperature

Every factory shall secure and maintain in every workroom adequate ventilation by circulation of fresh air, Temperature shall be Maintained such that the workers enjoy reasonable comfort and sustain Health. The Act also provides that the walls and roofs shall be made of such material such that temperature shall not exceed but be kept as low as Practicable. Where high temperature is involved the workers must be separated from the workroom by insulating hot parts or other effective Means. If the worker is exposed to unnatural temperature continuously he will loose his health therefore this provision is required.

(d) Dust and Fumes

The Act provide5 for effective measures to keep the workrooms Free from dust and fume. Impurities are of such a nature are likely to be injurious or offensive to the workers, effective measures are to be taken to prevent its inhalation and accumulation Exhaust appliances shall be applied. Where there is an application internal combustion engine it shall only be operated where the exhaust is conducted into the open otherwise the worker may develop occupational disease.

(e) Artificial Humidification

The state Government may make rules regarding prescribing standards of humidification regulating the methods of artificial humidification securing of adequate ventilation and cooling of oil in the workroom etc. Under Sec-15(2), the water taken from public supply or other source of drinking water for artificial humidification, such water shall be punished before it is so used. If it appears to the Inspector that water is not partied before use, he can serve a notice to the manager of the factory in writing specifying the measure.

(f) Over crowding

The Act provides that no room in any factory shall be overcrowded So as to injure the health of workers, The Act provides for at least 9.9. -

Cubic meters of space before the Act commences and 14.2 cubic meters of space after the commencement of the Act for every works employed. The Chief inspector can also prescribe the minimum number of workers who can work in each Workroom.

(g) Lighting

The section provides that every part of the factory where workers are working or passing, must have sufficient and suitable lighting, natural, artificial or both. The glassed windows and skylights, used for lighting must be kept clean both on the inner and outs surfaces and free from obstruction. provision is also made for the prevention of glare either directly or by reflection from a smooth or polished surface and the formation of shadows to such as extent as to cause eye strain or the risk of accident to any worker. Under section 17 (4), the State Government may prescribe standards of sufficient and suitable lighting for any manufacturing process.

(h) Drinking Water

- (i) This section provides for arrangement to Provide suitably placed drinking water facilities. The place shall be marked "drinking water" in a language understood by majority of workes and shall be beyond six meters of any washing place, urinal, latrine, spittoon, open drain or other source of contamination.
- (ii) Cooling water in hot weather where more then 250 workers are employed in a factory, the provisions for cooling water in hot weather shall be made.

It is to observe that providing drinking water is a most sacred deed. However the Law has mode it mandatory to provide drinking water.

(i) Latrines and urinals

- (i) Sufficient latrines and urinal Accommodation of prescribed types must be, provided at convenient places accessible to workers at any time while they are in the factory.
- (ii) Separate enclosed accommodation shall be provided for male and female workers.
- (iii) Such accommodation must be suitably lighted and ventilated and maintained in a clean and salutary condition at all times.
- (iv) Sweepers shall be employed to keep latrines and urinals, clean under section 19 (2) sanitary types, materials to be used floors and walls and cleaning have been prescribed. The state Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the number of male and female workers ordinarily employed therein (19(3)).

This is a very important provision on health because unhygienic sanitary conditions lead to health hazards.

(j) Spittoons

At the onset when one may be amused on his Looks at the provision for providing spittoon5 in a factory. But in reality it is a must for two reasons firstly health and secondly cleanliness.

The Act provides that every factory shall maintain spittoons in convenient places. They shall be maintained in clean and hygienic conditions. No person shall spit within the premises of the factory except in the spittoons. contravention of the rule attracts fine of Rs. 5/-. The state Government is empowered to make rules regarding the number and types of spittoons in every factory.

4.8 LET US SUM UP

The factories Act details the conditions to provide on Good healthy atmosphere. From cleanliness to spittoons, the various provisions take care of various fact situations. When one look at the provisions closely, he can understand that these provisions are interrelated. In addition to this, they have direct effect on environment both inside and onside the premises. Nowadays Law on Environment has been very meticulous because it is not the question of survival of one but the whole society whatever may be

the statutory presumptions, unless both employer and employee understand and respect the importance of these aspects, the health can not be protected. To submit precisely the success of the Act lies in the hands of both. In addition to this the role of inspecting staff cannot be ignored. The impostors shall exercise thus pourers. In D.C. and G. Mills co., V. Chief Commissioner Delhi, It was held that inspectors appointed do not simply carry on the duties laid down on themes under the Act, in the course of discharge of their duties and obligations the inspectors are expected to give proper advice and guidance so that there may be due compliance with the provisions of the Act “

It is further suggested that the penal provisions suggested punishing both employer and employee for non-compliance of the provisions shall be more rigid. The workers hardly understand the importance due to their law' educational standard wherein they are afraid of punishment on the there hand, it has been observed that many enlightened employers have provided most advanced working conditions to their workers keeping in view the possible health heralds, even better than the standards prescribed in the statute.

4.9 QUESTIONS

- (1) List out the statutory provisions relating health under the Factories Act 1948.
- (2) Enumerate law the Factories Act had provided for a healthy atmosphere to W'ork.
- (3) Give explanatory note on;
 - (a) Worker,
 - (b) Manufacturing Process,
 - (c) Occupier,

4.10 SUGGESTED READINGS

Same as prescribed earlier in Block 1.

UNIT 5 : SAFETY MEASURES

Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Why safety provisions are required?
- 5.3 Safety through Fencing of Machineries
- 5.4 Lifts and lifting machines
- 5.5 Floor, stairs and means of access
- 5.6 Other Protections
- 5.7 Safety of young persons
- 5.8 Safety of women workers
- 5.9 Let us sum up
- 5.10 Key words
- 5.11 Questions
- 5.12 Suggested Readings

5.0 OBJECTIVES

After studying this unit, you should be able to,

- Know why safety provisions are required.
- Understand safety measures prescribed in the law.
- Know the special provisions made to ensure the safety of women and young workers.
- Evaluate the precautions taken in case of lifts, lifting machines etc.
- Understand the other measures prescribed to reach the objectives of the statute.

5.1 INTRODUCTION

Dear students let us continue our learning on factories Act. In the previous unit we were able to know the provisions on health. In this unit we learn the provisions relating safety.

Safety is another facet of social welfare a worker is exposed to varied forms of dangers according to nature of machineries and manufacturing process, unless cautions are taken, the worker is exposed to danger throughout. The factories Act has detailed the safety measures, these provisions are exhaustive. The worker's welfare in safety perspective ought to be looked into as Human Rights too. He cannot be treated par with any tools or machinery. However, the fulfillment of these objectives is depending upon the involvement and commitment of the employer in any factory.

Safety provisions are detailed in chapter IV of the Factories Act. sections 21 to 40 deal with different safety measures to be undertaken in a factory. Production is a necessary part of manufacturing process. The worker engaged in the manufacturing process must work and at the same time ensure his safety, because only his being well would ensure optimum production. It is therefore the utmost responsibility of the occupier of the premises to ensure safety of the workers by providing safe working conditions.

A Factory consists of many machineries whose parts shall be constantly in motion. Slight negligence would cause disability or loss of any vital organ. Of course the workman would get compensatory amount as stipulated under the Workmen's Compensation Act, 1923. But would that be a compensation for death or loss of a limb? Certainly not. The Factories Act provides for precautionary measures to ensure safety.

The safety of a workman depends on two factors. Firstly, it is dependent on safe working conditions; Secondly utmost care is to be taken by the worker himself. The statute provides that the workman must be provided with safety gadgets like goggles, gloves, shields etc. But if the workman willfully neglects to wear them, it would be his own fault. Similarly where the workman neglects to follow the instructions prescribed for safety or works in an intoxicated condition, then statute does not help him. However the Act provides for a balanced approach to protect the interest of both employer and employee.

5.2 WHY SAFETY PROVISIONS ARE REQUIRED?

As stated above, the safety of workers ensures good production in a factory. Worker being the backbone of a factory can work to best of his ability only when his safety is ensured. The Workmen's Compensation Act 1923 provides for compensation to workmen for injuries sustained in the course and out of employment. section 3 of the said Act fixes the liability on the employer for accidents resulting in death or personal injury. The Factories Act on the other hand prescribes the standards to ensure safety. The provisions are mandatory in nature and rives liability on 'the occupier.

Safety is ensured as a part of social security measure to the worker. It is both moral and legal duty of the occupier to provide safe working conditions to the worker. Even the International Law through ILO conventions emphasizes workmen's safety. Worker is no longer a commodity but a human being. This is Human Rights approach.

5.3 SAFETY THROUGH FENCING THE MACHINERIES

In an industrial plant machineries are used. They are not only productive, dangerous also, if not used properly. By nature few machineries are danger. So the Act provides for safety measures. Let us study them one by one.

- (a) Section 21 provides that every factory shall secure safety of workmen by sufficiently fencing the parts of machinery while in motion or use.

The following parts need to be fenced. Every moving part of a prince moves, every flywheel connected to a prime moves the flywheel is in the engine house or not; headrace and tailrace of every water-wheel and water-turbine;

Any part of a stock bar which projects beyond the headstock of a lathe;

Every part of an electric generator, a motor or rotary converter;

Every part of transmission machinery; and every dangerous part of any other machinery.

- (b) Section 22 provides that while working on or near machinery in motion, it must only be carried out by a specially trained adult male worker wearing tight fitting clothes. The examination or operation of the machines in motion should only be made by a specially trained adult male worker.
- (c) (I) In case of striking gear and devices for cutting of power. In order to minimize chances of accidents and to ensure safety of workers, suitable striking gear or other efficient mechanical appliance shall be provided and maintained & used to move.

Driving belts to and from part of the transmission machinery, and such gear or appliances shall be so constructed placed & maintained as to prevent the belt from creeping back on to the fast pulley:

- (ii) Driving belts when not in use shall not be allowed to rest or slide upon shafting in motion. Sometimes it is necessary and expedient to cut off power to avoid loss or injury. So it is mandatory to provide such suitable devices to cut off power immediately. To sum up it is noticeable that the Act prescribes care factors minutely so as to avoid any case of emergencies. However the employer's response to these provisions makes the Act fruitful.

(d) Self-acting machines (section-25)

Traversing part of a self acting machine in any factory and material shall not be allowed to run on its outward or inward traverse within a distance of 45 c.m. from any fixed structure which is part of the machine. The self-acting machines are to be used Safety and carefully in the required manner under this Act.

(e) Casing of new machinery. (section 26)

This provision is to reduce the chances of accidents and risks. The machinery driven by power and installed in any factory must be safe. Every setscrew, bolt or key on any revolving shaft, spindle wheel or pinion shall be so sunk encased or effectively guarded as to prevent danger. All spur, worm and other toothed or friction gearing which doesn't require frequent adjustment while in motion should also be encased completely. It is imperative to follow these norms. In case of breach, it provides for punishment with imprisonment upto 3 months or with fine upto rupees five hundred or both. This speaks the concern of Law towards the safety of workers.

(f) Revolving machinery (Section-3D)

Where in factory in which the process of grinding is carried on, there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grind stone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted and the diameter of the pulley upon such shafts or spindle necessary to secure such safe working peripheral speed. Excessive speed is prohibited and it is mandatory to affix the notice permanently near each machine in use containing maximum speed limit. This shows the precaution taken by statute.

(g) Pressure plant (Section-31)

Where a plant or machinery or any part is operated at a pressure above atmospheric pressure, effective measures must be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded. The excess pressure may cause danger to the worker.

The state Government is empowered to make rules ~ regarding examination don't testing such plants or machineries and safety measures regarding pressure plants. The statute lays down objectives, however the state machinery shall fulfill this through effective implementation.

5.4 LIFTS AND LIFTING MACHINES

It is natural that a factory uses lifting Machines, chains, ropes and lifting that tackles in its activities. Safety ought to be ensured on their use. Safety and serials go together in this regard. Let us look at how statute deals with it.

- (a) section 28 of the Act stipulates that in every factory, every hoist and lift shall be of good mechanical construction. Sound material and adequate strength properly maintained and shall be thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination.
- (b) Section 29 deals with lifting machines. Every chain and rope shall be used for the purpose of raising and lowering goods or materials, provided they are properly maintained, of good construction and of adequate strength and free from defects. They must be thoroughly examined by a competent person once in every 12 months. Such equipment.s except for the purpose of test are loaded beyond the safe working load. Their capacity shall be displayed in prominent positions of the plant. It can be safely commented that these provisions are exhaustive enough to ensure safety of the workers which working with machines.

5.5 FLOOR, STAIRS AND MEANS OF ACCESS

The means of access shall be safe one. All possible care shall be taken according to the nature of machines. section 32 prescribes that;

- (a) All floors, steps, stairs, passages and gangways Shall be of sound construction, and properly maintained and shall be kept free from obstructions and substances likely to cause persons to slip and where it is necessary to ensure safety steps, stairs, passages and gangways shall be provided with substantial hand rails.
- (b) There shall, so far as is reasonably practicable, be provided, and maintained safe means of access to every place at which any person is at any time required to work.
- (c) When any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise to ensure the safety of the person so working (substituted in 1987 amendment).

In England, in *Levesly V Thomas* it was held that, once a safe means of access is provided such as passage or gangway, the occupier is not responsible for any temporary obstruction, such as patch of oil or slipperiness which may, through some accident or mischance, occur in it. If he has an efficient system to keep it clean and free from ~ obstruction, that is all that can be reasonably demanded of him. The expression reasonably practicable means that all *r* reasonable steps must be taken to provide and maintain safe means of access to every place at which any person is at any time required to work.

5.6 OTHER PROTECTIONS

(a) Pits, sumps and opening in floors:

Section-33 stipulate that in every factory every fixed Vessel, sump, tank, pit or opening in the ground or in a floor which may be so deep or situated so as I to likely cause danger, it must be covered or fenced.

(b) Protection to eyes

Section 35 provides that effective screens or suitable goggle shall be provided for protection of eyes where there is risk of injury to the eyes from particles or fragments thrown off during manufacturing process or where there is risk to eyes due to exposure to excessive light.

(c) Dangerous fumes, gases etc.

Section 36 stipulates that, a person can enter I. any chamber, tank, vat or pit, pipe flue or other i confined place where any gas fume, vapour or dust is present in such an extent so as to involve risk only where it is provided with a manhole of adequate size or other effective means of egress.

(d) Fire accidents

Section 38: All practicable measures are to be taken to prevent the outbreak of fire & its spread both internally & externally, safe means of access to escape and equipments to put off fire must be provided. Fire extinguishing equipments shall be places in prominent places with display.

5.7 SAFETY OF YOUNG PERSONS

The Factories Act provides for safety of young persons. Young person (Section 2(d)) means a person who is either a child or an adolescent. There is a total bar on employment of a child below 14 years. Only a child who has completed 15th year of age and above can be employed in a factory. Every statute contains special provisions relating to children. Be it penal code, companies Act, Trade union or Factories Act. The reason is obvious that a child is of very tender age and cannot understand the complications involved.

The factories Act impose5 5strict liability on the occupier for failure to comply with these provisions section 22 specifically mentions that a machinery in motion shall only be examined or operated by a specially trained. Adult male worker. Young persons cannot be permitted to do ~ this work. Similarly section 23 stipulated that no young person can be allowed to work at a machine unless he has been *fully* instructed as to the dangers arising in connection with the machine, the precautions to be observed, sufficient training provided and supervised by an experienced person.

Further the young persons cannot be employed near cotton openers or pressing cotton (Section 27). But they can be employed if the feed end of cotton opener is in a separate room partitioned from the delivery end.

5.8 SAFETY OF WOMEN WORKERS

Women are *from* time immemorial considered to be inferior to men. In a country like India still women do not have much independence. They can also contribute their share in production, yet women do not enjoy much power in the society. The statutes ensure them certain privileges. Almost every statute views women liberally. The constitution of India secures equal opportunities *for* both men and women, but at the same time ensures special privileges for women. (Article 15(3)).

The Factories Act ensures safety of women in many respects. Women workers cannot be engaged in night shifts. Secondly, dangerous machineries cannot be handled or operated by women (Section 22). They cannot be employed in cotton-openers (Section-23). Women cannot be allowed to clean or lubricate or adjust any part of prince in mover of any transmission machinery in motion (Section 22(2) etc. The minimum weights which can be lifted by women shall be -authorized and prescribed by the state Government. (Section-34).

5.9 LET US SUM UP

The Manufacturing process involves risk. The machineries, power and materials used in the factory, pose danger to the workers, especially women and children. It is impossible to prescribe how each and every machinery shall be fenced or maintained. However the statute says that such dangerous machineries ought to be fenced. The chains, ropes etc., ought to be periodically examined by experts. Special care to be taken to deal with gas, fires etc. Along with this cleanliness and hygiene shall be maintained in floors, gangways *etc.* All these prescriptions suggest that, the employer shall take adequate care to ensure the safety of workers. We have learned a lot from our previous accidents like Bhopal gas tragedy or Sriram industries, where a lot of workers and people outside suffered. However involvement of employer makes the law fruitful.

5.10 QUESTIONS

1. Explain the safety measures to be taken in a factory relating to dangerous machines.
2. Write explanatory note on:
 - (a) Safety of young persons
 - (b) Maintenance of floors stairs and means of access.

5.11 SUGGESTED READINGS

As given in other units-same texts can be referred.

UNIT 6 : WELFARE MEASURES, WORKING HOURS AND LEAVE

Structure

- 6.0 Objectives
- 6.1 Introduction
- 6.2 The need for providing welfare measures
- 6.3 Some important facilities
- 6.4 Washing facilities
- 6.5 Canteen and sitting facilities
- 6.6 First-Aid appliances
- 6.7 Shelter, rest rooms and lunchrooms
- 6.8 Special provisions for women workers
- 6.9 Working hours and Holidays of adults
- 6.10 Employment of young persons
- 6.11 Annual leave with wages
- 6.12 Penalties
- 6.13 Let us sum up
- 6.14 Key words
- 6.15 Questions
- 6.16 References

6.0 OBJECTIVES

Dear student this unit deals with the provisions on welfare, working hours, leave, etc. After studying this unit, you should be able to,

Know the need for welfare measure,

- Understand important facilities to be provided,
- List the special attention given in the statute in favour of women and children.
- Calculate the leave of different kinds of a worker, working hours and wages for overtime,
- Define young children under the Act and also protections given to them,
- Evaluate penalties prescribed for non-compliance to the Act.

6.1 INTRODUCTION

As it was stated earlier the workman is the backbone of a factory. Workman can work to his best of ability provided if he gets social security and his welfare is looked into. The social security and Welfare provisions are interrelated. Workmen *would* need certain basic infrastructure facilities like washing place, sitting place, and lunchroom etc., at working place. Female workers *would* require something additional. Mothers *would* need someone to look after their infant. Welfare measures ensure good working conditions and comprise all these things.

Welfare measures are also ensured in other statutes like Employees Provident Fund Act, Employees state Insurance Act, workman Compensation Act, Trade Union Act etc.,

Under the Trade Union Act, the General Fund of the trade union can be utilized to pay allowance to the members or their dependents on account of death, old age, sickness, accidents or unemployment of such members (Sec. 15 of Trade Union Act). section 4 of Workmen's Compensation Act determines the amount of compensation payable on account of death or disability.

The structure of welfare depends on four elements viz., the physical, mental, moral and emotional factors of an individual. The state of living of an individual depends on his environment. Labour welfare is a part of social welfare. Social welfare covers the state of well-being, happiness, satisfaction, conservation and development of human resources, with all economic security.

6.2 THE NEED FOR PROVIDING WELFARE MEASURES

As stated earlier the main objective of providing welfare measures is to ensure the well being of the workman, which in turn helps better Utilization of his energy and skill. A congenial working environment is necessary to a workman to ensure to ensure human dignity.

6.3 SOME IMPORTANT FACILITIES

Labour welfare covers every aspect of well being of labourers. section 42 to 50 of the Act contains provisions relating to the welfare of workers. Under the Act every minute need of a workman is taken care of. The workers are provided with basic facilities like Urinals and latrines, drinking water, sufficient places for sitting, rest rooms, Canteens, shelter and lunchrooms, place for washing and storing clothes etc., Female workers are ensured special facilities like creches free milk and refreshment for their children and the like provision is also made for appointment of welfare officers in factories wherein 500 or more workers are employed (Sec. 49). The State Government is empowered to make rules looking at the local conditions.

6.4 WASHING FACILITIES

This is a very important facility that is to be provided to the workmen. The Royal commission in its report has emphasized the importance of washing facility by stating that adequate washing facility ensures their comfort, health and efficiency.

Section 42 of the Act provides for the suitable washing facilities for the use of workers. Such a place must be conveniently accessible and be kept clean. At the same time it is obligatory to provide separate screened washing facilities for male and female workers.

Section 43 provides that the State Government to make rules in respect of factories to provide suitable places for keeping clothes not worn during working hours and for drying of wet clothing.

6.5 CANTEEN AND SITTING FACILITIES

Food is the very basic need of a person. Law contemplates that the Canteen facility shall be provided in factories where more than two hundred and fifty workers are ordinarily employed. The State Government may make rules providing for date, by which Canteen shall be provided, the standards in respect of construction, accommodation, furniture and other equipments of the canteen, foodstuffs to be provided and related matters (Sec. 46).

At the same time adequate sitting facilities must be provided and maintained for all workers obliged to work in a standing position so that they may take advantage of any opportunities for rest, which may occur in course of their work (Sec. 44).

6.6 FIRST-AID APPLIANCES

Every workman is exposed to constant risk during his work. The machinery in motion, the manufacturing process etc., may at any time cause injury to workmen inspite of necessary care and precaution. First-Aid is very important to secure well-being of workman. Timely first aid can surely minimize the risk of loss. The Act henceforth provided for first aid appliances. Section 45 stipulates that

every factory shall maintain readily accessible First aid boxes or cupboard, equipped with prescribed contents. The number is also specified as not less than one for every one hundred and *fifty* workers ordinarily employed at a given time. Further it is also provided that each first aid box shall be kept in charge of a separate responsible person who holds a certificate in First aid treatment recognized by the State Government and who shall be readily available during working hours of the factory.

An ambulance room of prescribed size containing prescribed equipment must be provided and maintained in factories where more than 500 workers are ordinarily employed. The ambulance room must be maintained and in charge of medical and nursing staff.

6.7 SHELTER, REST ROOM AND LUNCH ROOMS

Every *workman* needs some place to rest while he is not working. Section 47 of the Act stipulates that, a Factory employing more than 150 workers must provide them adequate and suitable shelters or rest rooms and suitable lunchroom with drinking water facilities where workers can eat meals brought by them. It should also be sufficiently lighted & ventilated and also cool and clean in condition.

6.8 SPECIAL PROVISION FOR FEMALE WORKERS

It is to be noted that the female workers are provided special welfare felicities. They are provided with separate places for urinals and latrines; separate washing places and separate place for drying clothes. The another important provision is providing crèches. The Royal Commission has stressed upon the desirability of providing this amenity of creches as follows:

“Creches are not uncommon in factories employing *women*. In many of the factories employing women in a substantial number, no creches have been provided. As a result of their absence, infants are taken into the mills, and found lying on sacking, in bobbin boxes and other unsuitable places exposed to the noise and danger of moving machinery & a dust laden atmosphere”.

Female workers get the usual benefits, which men get *like* social insurance, gratuity, provident fund, medical benefits, educational facilities etc., In addition to them they also get maternity benefits and maternity leave with wages.

Section 48 of the Act stipulates that, in factories where more than 30 female workers are employed, a suitable room is to be maintained for use of children under the age of 6 years of such women, creches should be adequately accommodated, lighted, ventilated and maintained in a clean and sanitary condition and under the charge of trained women in care of children. The state Government has rule making powers.

Provision shall also be made for the supply of free -milk or refreshment or both. suitable place for washing and changing their clothing and the facility for the mother to feed the child at necessary intervals shall be provided. Women workers are entitled to benefits specified in Section 54 of the Act that is, the provisions relating to daily working hours. It is important to note that, no woman shall be remained to work or allowed to work in any factory except between 6 A.M. and 7 P.M. (prohibition on

employing women in night shifts). Thus in no case any woman may be required or allowed to work between the hours of 10 P.M. and 5 A.M. (Section 66 (1) (b)). However the State Government may make rules creating exemption to this in specified factories like fish curing or fish canning factories otherwise the materials deteriorate.

It is important to note that the statute has taken adequate care to protect the welfare of women workers. However, ground realities are taken care of.

6.9 WORKING HOURS AND HOLIDAYS OF ADULTS

The history speaks that there would be no limitations on working hours during olden days. Now things have changed. The hours of work has been fixed by the Factories Act. The health and efficiency of workers depend mostly on the number of hours they work. A long hour of work causes serious strain on the health of workmen. The table given below indicates the permissible hours of work.

Sl No	Factories Act Amendment Year	To whom	Factory	Hours of work fixed		Rest Period Hours	Etc.,
				Per day	Per week		
1.	Act 1881	Children Age 7-12	-	9 hours	-	1 hours	-
2.	Act 1891	Women Children Age 9-14	-	11 hours 7 hours		1 ½ hours	-
3.	Act 1911	Male	-	12 hours		1 hours	-
4.	Act 1922	Male Children Age 12-15	-	11 hours 6 hours	60 hours	-	-
5.	Act 1934	Adult Adult Adult Children Children	Seasonal factory Perennial factory Spread over	11 hours 13 hours 10 hours 5 hours 6 ½ hours	60 hours 54 hours hours	-	Overtime is 1 ½ times Ordinary wages
6.	Act 1946	Adult Adult Adult	Seasonal factory (Spread Over) Perennial	10 hours 11 ½ hours 9 hours	54 hours	-	Overtime double wage Ordinary wages
7.	Act 1948	Adult Adult Children Children	(Spread over) (Spread over)	10 ½ hours 4 ½ hours 5 hours	48 hours	-	As in above in addition to number of measures

Section 51 provides that no adult worker shall be required to work in a factory for more than 48 hours a week. Adult worker shall not work in a factory on the first day of the week (Sec.52).

One shall learn the following very important aspects relating to working hours of adults.

A) Weekly holidays

Under section 52(1), no adult worker shall be required or allowed to work in a factory on the first day of the week, unless, he has or will have a holiday for a whole day. On one of the three days immediately before or after the said day; and the manager of the factory has, before the said day or substituted day whichever is earlier delivered a notice at the office of the inspector of his intention to require the worker to work on the said day and of the day which is to be substituted and also he shall display a notice to that effect in the factory. But no substitution shall be made which will result any worker working for more than 10 days consecutively without a day holiday for a whole day. It is a very simple provision, which aims at providing for a weekly rest day. Rest is required in the interest of health of a workman. Normally Sunday is the rest day. Previously Sunday was declared holiday on religious ground, that is to felicitate workers to go for prayers. But in many cases, due to nature of manufacturing process or nature of duty or other pressures, the workers are asked to work continuously without break. The International convention requires a rest for merely 24 hours continuously and not a calendar day's rest. India is a signatory to this convention. It is interesting to observe that Indian Law is better than International Law in the expression that the prescription of one calendar day's rest. The exemptions created under section 52(1) (a) and (b), if were to be operative, specific permission of the chief inspector shall be obtained.

b) Compensatory holidays (Section 53(1):

Wherever a worker is deprived of any of the weekly holidays for which provision is made under section 52(1), he shall be allowed, within the month in which holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost. It is interesting to note law. The law has taken care of holidays lost due to compulsions at working place. It is a principle based on equality. The state Government has been authorized to prescribe the manner in which compensatory holidays shall be allowed.

c) Daily hours

How long a worker can be asked to work in a day? In olden days, where 'hire and fire' principle was operative, the workers were as forced to work to an unlimited duration-may be 18-20 Hrs. The local Laws and International Laws have prescribed duty hours on daily basis under section 54-subject to 48 hours of work per week and more than 9 hours a day, been prescribed to an adult. The labours economics speaks that excessive work does not yield much instead, it leads to deterioration of health and work potential with decrease. Hence it may have bad effect on industrial production. It is a very satisfactory provision in Factories Act.

Section 55 provides for intervals for rest during working hours. Accordingly, the periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work more than five hours before he has had an interval for rest of at least half an hour. Continuous work leads to deterioration of efficiency and fatigue. Rest at intervals is a must. Thus there is a limitation on spread over also. The spread over of the work period of an adult worker must not exceed 10 1/2 hours in any day, including intervals of rest. However the chief inspector may increase it up to 12 hours by giving reasons in writing.

In unfortunate that in majority of industrial activities these provisions are followed meticulously. The 'Daily hours and spread over are normally long hours.

d) Restrictions on Night shifts overlapping shifts

A worker cannot be asked round the clock. When cannot be asked to work in two shifts continuously. When a worker works in a shift extending beyond mid night, a holiday for a whole day shall mean, a period of 24 consecutive hours beginning when his shift ends. The following day for him shall be deemed to be the period of 24 hours beginning when such shift ends and the hours he has worked after midnight shall be counted in the previous day. Similarly, work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time. (section 58).

e) Overtime and Extra wages

Under section 59, when a worker works in a factory for more than 9 hours in any day or more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his 'ordinary rate of wages'.

f) What is ordinary rate of wages?

It means, the basic wages plus such allowances including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles as the worker is for time being entitled to, but does not include a bonus and wages for overtime work (section 59(2)). The concessional sale of food grains or articles to the workers shall be computed as often as may be prescribed on the basis of the maximum quantity of food grains and other articles admissible to be standard family (section 59(4)). Standard family means a family consisting of a worker, his or her spouse and two children below the age of 14 years requiring in all 3 adult consumption unit.

When any worker is paid on a piece-rate basis, the time rate shall be deemed to be equivalent to the daily average of their full time earning for the days on which actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers.

On talking into consideration the house rent allowance, if their service rules *allow* for house rent allowance, despite occupying official accommodation, than overtime wages should be calculated on the basis of their basis wages plus house rent allowance. See Govind Babu Salvi and others V Viswanath Joshi and others (1995 SCC 308) .

g) Rests action on double employment

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed (section 60). The inspector can permit for it provided such worker is not allowed to work for more than 48 hours in any week and is allowed to weekly holiday.

6.10 EMPLOYMENT OF YOUNG PERSONS

The Constitution had clear directions not to employ children below the age of 14 years and to provide them free and compulsory education along with securing that the health and strength of workers, man and women and tender age of children are not abused and forced into avocations un5uited to their age and 5strength faced by economic necessity (section Articles 24, 39 e & f and 44). The International Labour organization through various conventions and recommendations adopted the policy of discouraging child labour. The public opinion also has contributed a lot in creating awareness in employers, Legi5lator5 and the General Public at large.

The protections given under the Act are prohibition of employment of young children, certificate of fitness issued by 5urgeon, working hours for children, Regi5ter on child workers and mandatory medical examination. These aspects have to be read along with the other provisions laid down elsewhere in the Act like safety provisions.

A child who has completed his 14th year shall be required or allowed to work in any factory. It is interesting to study the Supreme Court decision and directions in M.C. Mehta B state of Tamilnadu (AIR 1991 SC 417. public interest litigation was filed under Act 32 by an eminent lawyer having public intere5t Mr.M.C.Metha on seeking a direction to prohibit employment of children in match factories of sivakasi, Tamilnadu. The Supreme Court viewed that the manufacturing process of matches and fire works in a hazardous and dangerous task; hence the children shall not be employed in manufacturing process. However it allowed the children to work packing, on economic compulsions but in an area away from manufacture. The Government shall ensure that every employee working thus shall be issued for Rs. 50, 000/- .This is a very important deci5ion wherein the court tried to balance the provisions of Factories Act, constitution and the social realities. A d young worker has to carry a token while he is at work (5ection68). The young worker has to get a certificate of fitness granted with reference to him under section 69. The certifying surgeon shall on application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory. The certificate may be renewed I yearly. The certificate grants permission to work in the factory as thought he is an adult worker.

Working hours for children

The certifying surgeon will issue a fitness certificate to such persons if he is satisfied that the person has completed his fourteenth year and attained the prescribed physical standards. Such children can be (employed to work subject to following conditions;

- a) Not to be asked to work fourth and half hours in any day.
- b) Not to be asked to work during night (10 pm to 6 am)
- c) Shifts not to overlap or spread over more than 5 hours.
- d) The rules governing weekly holidays shall apply to the child workers also.
- e) It is very important to note that no female child shall be required or allowed to work in any factory except between 8 A.M. and 7 P.M. (section 71(5)).
- f) A Notice clearly showing the period of work of children shall be displayed every day in English or in any language understandable to majority of the workers at some conspicuous place.
- g) A Register of child workers shall be maintained giving details on name, work, group, shift and number of fitness certificate.

6.11 ANNUAL LEAVE WITH WAGES

li The Act provides for leave along with wages following;

- a) Every worker who has worked in a factory for a period of If 240 days or more in a year, he is entitled for one day for every 20 days worked (adults) or me day for every 15 days worked (in case of children).
- b) Leave not enjoyed in the year can be accumulated in the succeeding years upto a limit of 30 days for an adult and 40 days for a child.
- c) Three national holidays and five festival holidays (may be fixed by government in consultation with employees)
- d) Any days of layoff, or maternity leave, or leave earned previously shall be deemed to be the days the worker has worked, but shall not earn leave for these days.
- e) The leave admissible as annual leave shall be excusive of all holidays.
- f) If the worker is discharged or dismissed or quits employment or dies or superannuated, during the course of such calendar year, he or his nominee or heir as the case may be is entitled to wages in lien of such leave to which he was entitled.

The Supreme Court has observed that, the leave provided under sec 79, arises as a matter of right when a worker has put in a minimum number of working days and entitled to it. -Birdhi chand Sharma V First Civil Judge Nagpur (AIR 1961 SC 644).

The worker shall be entitled to wages at a rate equal (to the daily average of his total full time earnings for the day on which he actually worked during the month immediately preceding *his* leave. (Sec 80(1)).

This is to observe that these protections are given to a worker to ensure him a good working condition and to maintain his health and also to facilitate him to look at *his* personal needs. These are all welfare measures too.

6.12 PENALTIES AND PROCEDURES

Under Sec 92, the owner of the premises is liable to an imprisonment for a term (two years) or with a *fine* (upto one lakh) or both for any contravention to the provisions of this law or rules there under. The fine may extend to one thousand rupees for each day on which the contravention is continued. Further, any contravention to chapter IV or Section 87, and resulted in an accident causing death or serious bodily injury the fine shall not be less than 25 thousand rupees. The Courts have been very rigid in this regard and developed the theories of 'no fault liability' and 'absolute liability', which are helpful to unfortunate workmen. It has been a test experience of the society that the public welfare and interest will follow and is backed by sanction of penalty.

Similarly, if any worker employed in a factory contravenes the provisions of the Act, he shall be punishable with fine, which may be extend to 500 Rupees. The Act has very detailed provisions on penalty for many specific contraventions like, obstructing the inspector, false certificates, double employment of children or enhancement of penalty for repeated contraventions. It heralds the commitment of the Act towards meticulous compliance to the provisions of the Act which are pro employee.

6.13 LET US SUM UP

Dear student hitherto you have studied various aspects of factories Act aiming at extending welfare with good healthy working conditions along with the stipulations on working hours and leave. The provisions relating to children, women workers and leave provisions are noteworthy. The subsequent incorporations to Act through Amendment Act 1987 like Sec 7-A,B, 41"-A,B,C,D,E,F,G,H, 96- A, 104-A, and 118-A are very important insertions through which Act has become more strong and transparent. All these provisions strengthen the hands of the worker. However, the worker is exposed to constant dangers and risks. Unless the employers understands the humane face of the Act, the position of the working conditions can not be improved.

With the reading of units 1,11,111, on Factories Act, together, you can develop a good understanding on law legislative exercise is being done to ensure, safety, health and welfare of the workers are ensured.

6.14 QUESTIONS

1. Discuss the Facilities to be provided in a factory for a good working condition. state the special provisions relating to female workers.
 2. Explain the special provisions on ensuring the children against danger of employment in factories.
 3. Give a note on 'Leave and Wages'.
 4. Give short note on;
 - a) Penalties for non-compliance to the Act.
 - b) Holidays.
 - c) Night shifts and workers.
-

6.15 SUGGESTED READINGS

As given in other units

NOTES

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BLOCK - III :

UNIT 7 : PAYMENT OF WAGES ACT 1936

Structure

- 7.0 Objectives
- 7.1 Prelude
- 7.2 Salient features of the Act
- 7.3 Some important definitions
- 7.4 Payment of Wages
- 7.5 Deductions from wages
- 7.6 Enforcement authorities under the Act
- 7.7 Penalties
- 7.8 Let us sum up
- 7.9 Terminal Questions
- 7.10 Books to be referred

7.0 OBJECTIVES

After studying this unit you shall be in a position to know;

- The reasons for a statute on payment of wages
- Meaning of few important concepts
- How payment shall be made
- Allowed deductions and not allowed deductions.

7.1 PRELUDE

The payment of wages is another requirement. The constitution of India under Part IV The Directive Principles of state Policy enshrines responsibility on the state machineries to ensure basic conditions of living to workman. The Right of life (Article 21) protects the workman on par with an individual guarantying him basic wages. The courts have positively expanded right to life to include rights like right to livelihood and right to live beyond mere animal existence.

International law also provides for payment of wages in ratio to work done. The Human Rights as enshrined in the UN universal Declaration of human right also protects the workers on their wages.

Before the enactment of this Act, 'Wages not were regularly paid to the workers. Several unfair labour practices there. 'Wages were paid in cash or in kind but inordinate delay and manipulations led to poverty. The employers made several deductions out of the wages and the actual wages of a worker was very small. These circumstances led to the codification of payment of wages Act in 1936. In simple words this statute ensures proper and periodical payment of wages for which the worker is entitled to.

7.2 SALIENT FEATURES OF THE ACT.

The Act is based on the recommendations of the Royal commission on Labour in India. The Act intends to regulate the payment of wages to certain class of persons employed in industries. The Act also provides for speedy and effective remedy to the employees in respect of their claims arising from illegal deductions or unjustified delay made in payment of wages. In other words, the Act ensures their benefits to workmen namely:

- Applicable allover the territory of India including Jammu and Kashmir.
- Payment of wages in particular form
- Payments at regular intervals
- Prohibitions of unlawful and unauthorized deductions from wages.

7.3 SOME IMPORTANT DEFINITIONS

It is important to know some important definitions Under the Act. Section 2 of the Act defines following;

- (a) Employed person: (Section 2(i)) includes the legal representative of the deceased employed person.
- (b) Employer: (Sec 2 (ia) 'Employer' includes the legal representative of a deceased employer.
- (c) Factory (section 2 (ib)) Factory means a factory as defined in section 2 (m) of the factories Act 1948.
- (d) 'Wages' (2(vi)) means all remuneration, whether by way of salaries, allowance, or otherwise, expressed in terms of money or capable of being so expressed which would, if terms of employment express or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes –
 - (a) any remuneration payable under any award or settlement between the parties or order of a court.
 - (b) any remuneration to which the person employed is entitled to in respect of overtime work or holidays or any leave period.
 - (c) any additional remuneration payable under the terms of employment.
 - (d) any sum payable by reason of termination of employment of person employed is payable under any law, contract or instrument.
 - (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

And does not include,

- (1) Any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court.
- (2) The value of any house accommodation, or of the supply of light, water, medical assistance or other amenity, or of any service excluded from the computation of wages by a general or special order of the state Government.
- (3) Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

- (4) Any T.A. or the value of any traveling concession.
- (5) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) Any gratuity payable on the termination of Employment in cases other than more specified in sub- clause.

It is clear from the above definition that the term 'wages' is exhaustive containing inclusive and exclusive clauses. Let us look at few cases on this.

The Supreme Court in Purushottam HJ V/s V-B Poddar

It was held that gratuity which may be payable to an employee by reason of his termination would fall under the term "wages" if it is shown that it is payable under any law, contract or instrument.

In inspector V/s BES , Co.,

The Supreme Court observed that "A workman whose service is terminated in consequence of transfer of an undertaking whether by agreement or by operation of law has a statutory right under Sec.25F of Industrial Disputes Act to compensation". The court concluded that this "compensation" payable falls under the definition 2(iv) and therefore are WAGES.

7.4 PAYMENT OF WAGES

The main objective of the Act is to ensure that workers get their wages on time and at regular intervals. section 5 determines the time of payment.

Section 3 of the Act fixes the primary responsibility on the employer to pay wages. In case of a factory, the manager- of the factory is responsible for paying wages in other premises; the occupier is responsible for payment of wages. The wage period is fixed as one month (Sec.4)

Section 5 details the time of payment where the number of persons employed is less than one thousand persons, any railway, factory or industrial or other establishment, wages must be paid before the expiry of the seventh day after the last day of the wage period.

In case of persons employed on a dock, wharf or jetty or in mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded must be paid before expiry of the seventh day of such completion.

In case of termination of employment of an employee, wages earned by him shall be paid before the expiry of the second working day from the day on which employment is terminated.

Wages shall be paid only in current coins or currency notes. Sec 6 envisages that wages can be paid either through cheque or crediting the wages in the bank account of the workers provided, written authority is obtained by the workman in this regard.

7.5 DEDUCTIONS FROM WAGES

The payment of wages Act is clear in defining the term 'deduction'. Accordingly, every payment made by the employer to the employee or his agent is deemed to be a deduction from wages.

Section 7 of the Act provides in mandatory terms that, the wages of an employed person should be paid to him without any deductions of any kind except those authorized by or under the payment of wages Act. This is a General prohibition on deductions.

Any loss of wages resulting from the imposition for good and sufficient cause does not amount to deductions. Withholding of increment or promotion including the stoppage of an increment at any efficiency bar; reduction to a lower post or time scale or to a lower in a time scale; shall not be deemed to be deductions.

The deductions can be studied under two broad heads viz., authorized deductions and unauthorized deductions. See table given below gives a clear picture of various types of deductions.

Deductions

Permissible	Not permissible
Fines with approval of state government or authority	Fines without previous approval of State government or authority
Deduction for absence from duty if it is voluntary	For absence from work due to an unforeseen event like illness
For Damage to or loss of goods due to default or neglect of the worker	Damage to or loss of goods not by default or neglect
Deduction for House accommodation	Deduction for Free House accommodation
Deduction for Amenities and series with prior authority from state government	Deductions for tools and law materials provided for employment
Deductions for recovery of advances	Recovery of unemployment compensation

For recovery of loans made from the welfare fund	
Deductions for Income-Tax	
For recovery of loans made for specific purpose	
By order of the court	
For provident fund	
For payments to Co-operative societies	
Deduction for Welfare fund	
Deduction for Trade Union Membership fee	
Deductions with the consent of the employee	
Deductions for fidelity guarantee bonds	
For losses sustained by Railway administration	
For losses caused due to failure of proper collection charges	
Deductions for recovery of losses due to incorrect refunds	
Deduction for Prime-Ministers National Relief Fund	

(a) Authorized Deductions

We can have a discussion of these deductions in brief. section 7(2) of payment of Wages Act provides that deductions from wages of an employed person shall be made only in accordance with the provisions of the Act and may be of the following types only.

(i) Fines

Section 8 empowers the employer with the previous approval of the state government to impose fines on the employed in respect of his acts and omissions. A notice specifying such acts and omissions must be exhibited in the prescribed manner on the premises of employment. Fine can only be imposed after due opportunity of showing cause against fine is given to the employed and the total amount of fine in one wage period shall not exceed an amount equal to 3 percentage of the wages payable to him. The Act further restricts imposition of fine for employed persons under 15 years and fine cannot be recovered in installments or after 60 days expiry from the date of imposition.

(ii) Absence from duty

Section 7(2) (b) permits deductions for the absence from duty deductions can only be made on account of absence of an employed person from place or places of work. 'Place of work' means the place he is required to work under the terms of his contract of employment. The absence may be for the whole or any part of the period during which he is required to work (Sec 9).

The amount deducted for absence from work shall not exceed a sum, which bears the same relationship to the wages payable in respect of the wage-period. If 10 or more themselves without due notice, (without giving notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for 8 days. This deduction is subject to the rules made in this behalf by the state Government.

Absence from work means the voluntary absence by the employee and not absence forced by circumstances caused by the employer. But where employee presents himself at the place of work, but refuses to work in pursuance of a stay- in-strike or for any other reasons it is deemed to be absence from work. .

Let us discuss some case laws on this aspect .

1. V.Ramchandran V/s Indian Bank [(1979) ILJ 182]

The Madras High Court has held that the basic principle to be followed is "NO WORK", NO PAY". An employee has to work in order to earn his wages. Absence from duty means that the workman has not worked during the period of absence and therefore disentitled for wages for such a period of absence.

2. Dharam Singh Rajput & others V/s Bank of India, Bombay [(1979) IC 1979]

In this case the Court observed that the interests of both employee and employer must be reasonably & justly balanced. Where the absence from work can be attributed to unforeseen circumstances like sudden illness, accidents etc., and the employer may not deduct the wages. But this aspect is not an unrestricted discretion of the employee to report for work at liberty. If only the reason for being absent is due to a legitimate cause the employer shall not deduct the wages. But where absence from duty for a part of the day can be rightly held as absence for the whole day, the employer (the respondent Bank in this case) can deduct wages for the whole day.

3. Mineral Miner's Union V Kuduremukh Iron Ore Co. Ltd., [(1989) 1Lab LJ 227 (Kar)]

The Karnataka High Court in this case held that deduction of wages for the strike period is justified provided the strike was illegal.

4. Surendranathan Nair & ors V/s Sr.Divisional Personal officer (Rlys) [(1988) 1 Lab LJ 227 (kar),¹

In this case the court held that, deduction of wages by the Railways was justified. The Railway employees participated in an agitation for refusal of leave by the Railways. The Railways treated this as absence from work and deducted the wages. The Court held that the Railways have authority U/A 309 of the constitution and rules made are binding on employees. Unauthorized absentee has no right to compel payment of wages.

The payment of wages Act is regulatory in nature. It protects both the employer and the employee and maintains amity and peace in factories and industrial establishments. If this provision were not incorporated, the workman would have had to suffer unauthorized deductions at whim and fancy of the Employer. Again on the other hand the Employer would suffer both loss of production and payment of wages on account of too much liberty of Employee. This provision balances the rights and duties of both Workman and the Employer.

(iii) Deduction for damage or loss of goods

Section 7(2) (C) provides for deductions for any damage or loss of goods. Goods are entrusted to the custody of the employee, when it gets damaged or lost, and directly resulted from negligence or default of the workman. Law contemplates that such a loss or damage when caused by the employee by his neglect or default must be made good by the employee himself. section 10 details the rules.

The deduction for this purpose shall not exceed the amount of damage or loss caused to the employer by the neglect or default of the employee. The employee must be given a reasonable opportunity to show cause against deduction. Such deductions must be recorded in a register kept by the responsible person for payment of wages under section 3 in the prescribed form.

(iv) Deduction for house accommodation

Shelter is one of the primary needs of an Individual. A workman is also a human being and requires a decent living accommodation. The employer is permitted to deduct a portion of wages for this purpose. The house accommodation may be supplied by the Employer or by the Government or by any Housing Board or any authority specified in this behalf.

The house accommodation may sometimes be provided by the employer free of cost. In such cases it is illegal to make any deductions. section 11 puts certain restrictions on the employer. Accordingly, the House accommodation had to be accepted by the workman, as term of his employment and the deduction shall not exceed the sum equivalent to the value of the house accommodation Provided. Deductions in this case are subject to the conditions imposed by the state Government.

(v) Deduction for Amenities and Services

The employer may make deductions for amenities and services supplied by him to the employee provided prior authority is obtained from the state Government or from any officer specified in this behalf.

Supply of raw materials and tools required for the purpose of employment does not come under the term 'Services'. The deductions can be made only if it is accepted by the employee as a term of his employment, (section-11). The deduction cannot be in excess of an amount equivalent to the value of such amenities or services supplied.

(vi) Deductions for Recovery of Advances

Section 7(2) (f) permits deductions for recovery of advances of whatever nature including advance of TA or conveyance allowance and the interest due in respect thereof or for adjustment of over payments of Wages. section 12 stipulates two kinds of advances viz., Advances given before employment and advances given after the employment has begun.

For recovery of advances given before employment, it can be recovered from the first payment of wages in respect of a complete wages period. But if this advance is for meeting travelling expenses, it cannot be recovered.

For recovering advances given after the employment has begun, the Rules made by the state Government must be followed.

Recovery of unemployment compensation is unauthorized for the obvious reason that unemployment wages do not come under the term "wages" under section 2 (vi) of the Act and overpayment on that account cannot be adjusted as against wages.

(vii) Deductions for Recovery of loans made from the Welfare fund

Welfare fund is established to act as a social security measure to workers. If any workman is injured or dies, the Welfare funds are utilized to compensate him or his family members. Welfare fund is purely constituted for the welfare of labour community. Where employees take loan from this Welfare fund, the same is to be recovered by way of deductions. The deductions under this head can be only in accordance with the rules approved by the state government. Any interest due on this loan can also be recovered.

(viii) Deduction for Income tax

The Income Tax Act governs the period and extent of tax payable by the employee. The Deductions under this head can be made to the extent of tax payable.

(ix) Deduction for recovery of loans made for specified purpose

Section 7(2) (ff) authorizes deductions for recovery of loans granted for the purposes approved by the State Government.

House building is one such, specific purpose. The rules made by this State Government is to be abided in this respect. The interest payable on this amount is also fixed by the state Government.

(x) Deductions on the order of the court

The Court is an organ of Government. The order passed by the Law court is binding. The Court may order deductions from the wages of an employee in respect of any loan or some other purpose which is due against him. In such cases the competent authority must pass the order -Section 7(2) (h) permits such deductions by the order of the court.

Deductions can be made only on satisfaction of the following conditions.

- Existence of an order of the Court requiring deduction from wages.
- Order of other authority competent to make such order.
- Authority must be statutory one duly empowered to make order.
- Order must be made Legality or illegality Validity or invalidity does not make any difference.

(xi) Deduction for Provident fund

Provident Fund is constituted under the Provident Funds Act, 1925. This fund also like a social security measure. The employee can also avail loan facilities from the provident fund. Deductions can be made under this head by the employer for recovery of advances or for payment of subscriptions. The State Government is empowered to make Rules in this respect.

(xii) Deductions for payments to Co-operative Societies

Section 7(2) (j) of the Act authorizes deductions for payments to Co-operative societies approved by state government and subject to conditions imposed by the state government.

(xiii) Deduction for welfare fund

Section 7 permits the employer to deduct wages under this head. Welfare fund is being created to meet the welfare of the workers.

(xiv) Deduction for Trade Union Membership fee

Trade Union is a collective body of workman organized and managed by them. Trade Union requires funds for pursuing its goals. The subscription fee is to be paid by its members. The employer can deduct wages for payment of the contribution towards the subscription fee. But prior written authorization

is to be obtained from the employee. (xv) Deduction with the consent of employee section 7(2) (K) permits deductions made with the written authorization of the employees for payment of any premium on their LIC policies to LIC of India, or for purchase of securities of government of India or of any state government or being deposited in any post office savings bank under any savings scheme.

(xvi) Deduction for Fidelity Guarantee Bonds

Section 7(2) (1) authorizes deductions for payment of Insurance premium on the fidelity guarantee bonds.

(xvii) Deductions for recovery of losses sustained by a Railway administration

Section 7(2) (m) authorizes the employer to make deductions for recovery of losses sustained by a Railway administration on account of acceptance by the employee of counterfeit, counter coins or mutilated or forged currency notes. But such deductions can be made only after due opportunity of showing cause has been given to the employee.

(xviii) Deductions of losses caused due to failure of proper collection charges

Section 7(2) (n) permits deductions under this head for losses sustained by the Railway administration on account of failure of employed person to invoice, to bill, to collect or to account for appropriate charges due.

(xix) Deduction for recovery of losses due to incorrect refunds etc.,

Deductions can be made under this head on account of loss sustained by railway administration for any rebates of refunds incorrectly granted by employee where such loss is directly attributable to his neglect or default.

(xx) Deductions for Prime Minister's National Relief Fund etc.,

Deductions under this head can be made with the written authority of the employee.

(b) Maintenance of Register and Records

The employer must maintain registers for recording all the deductions and realizations. The person responsible for payment of wages under Section 3 has to maintain them regularly (section 13-A). It must contain the following particulars.

- Particulars of persons employed by him.
- Work performed by them.
- Wages paid to them.
- Deductions made from their wages.
- Receipts given by them.
- Other particulars.

(c) Total Amount of Deductions

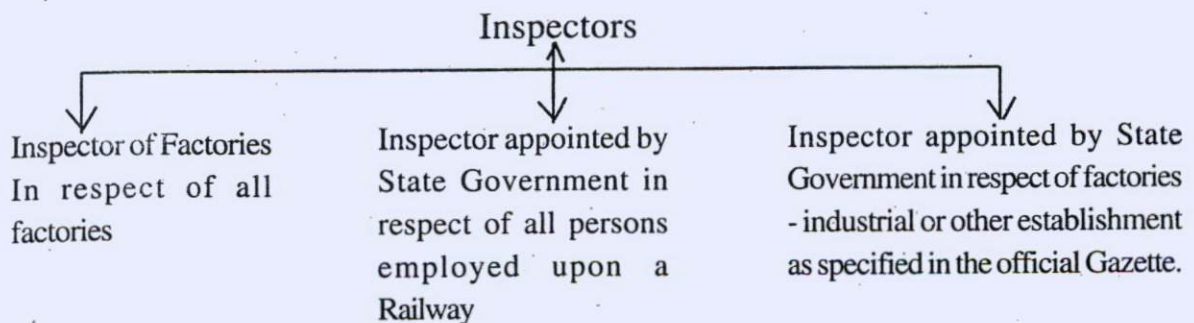
Section 7(3) lays down the total permissible deductions. Deductions shall not exceed 75% of wages in a case of deductions wholly or partly made for payment to co-operative societies and 50% in other cases. Any excess deduction can be recovered in the prescribed manner from the Employer.

7.6 ENFORCEMENT AUTHORITIES UNDER THE ACT

A statute has significance if there is enforcing mechanism to implement it. The significance of enforcement mechanism lies in implementing the statute the authorities constituted. Under this statute has Inspectors of factories constituted under Factories Act & authority to hear claims (section-15). The inspectors have wide powers under the Act to make examinations and inquiries, to inspect any premises, etc.,

(a) Inspectors:

Section 14 envisages three kinds of inspectors. See the chart below.



Powers of Inspector's

The Inspectors following powers (Sec 14 (4))

- To make any examination and inquiry to ascertain that provisions of the Act are observed.
- To enter, inspect and search any premises of any Railway, Factory, Industrial or other establishments at reasonable hours.
- Supervise the payment of wages of employees.
- To order production of any register or record.
- To seize or to take copies of such registers or records in respect of offences committed by the employer under this Act.
- Exercise such other powers as prescribed.

It is the duty of the employer to afford all reasonable facilities to the Inspector while exercising his powers under the Act (Section 14-A).

(b) Authority to hear claims

Section 15(1) provides for appointment of a person to be the authority under the Act to hear and decide for any specified area all claims arising out of the deductions from the wages or delay in payment of wages of persons employed or paid in that area. The person so appointed has jurisdiction to hear and dispose the applications within the specified area.

(c) Claim application

An application can be moved in the Court appointed under this Act when the provisions of this Act are violated. Such an application is known as claim application. It must be filed by anyone of the persons mentioned below.

- Employed person himself
- Legal practitioner on his behalf.
- Any official of a registered trade union authorized in writing to act on his behalf.
- Any inspector appointed under this Act.
- Any other person acting with the permission of the authority appointed under section 15(1) of the Act.

The claim application has to be filed within 12 months from the date on which the deduction from wages was made or from the date on which payment of wages was due to be made. However this period can be extended by the authority on proof of sufficient cause by the applicant.

7.7 PENALTIES

For contravention of the provisions of the Act, by any person responsible for the payment of wages to an employed person, shall be permissible with fine which shall not be less than Two Hundred Rupees which may extend to One Thousand Rupees the fine varies according to contravention of provisions. (Sec 20).

A suit prosecution or other legal proceedings shall not lie against the Government or any Officer of the Government for anything which is in good faith done or intended to be done under this Act.

7.8 LET US SUM UP

This Act protects the Employees against illegal and unreasonable deductions in their wages. In the cause of employment, many lapses may occur. For any such lapse, fine or deductions cannot be made unless otherwise authorized by the Act itself. There can be deductions provided, they are allowed under Law. If one closely studies this statute, he can understand the thrust of the statute whereby the livelihood in the form of wages shall be ensured the Courts have given very encouraging decisions in this regard.

7.9 SUGGESTED QUESTIONS

1. What is wages? How Wages are ensured against deductions?
2. What are the allowable deductions?
3. Write note on;
 - a) Deductions not allowed.
 - a. Inspectors
 - b. Penalties

7.10 BOOKS TO BE REFERRED

Along with the books prescribed in the provisions units, you may refer,

- a) S.N. Misra -Labour and Industrial Laws
- b) Dr. V.G. Goswami -Labour and Industrial Laws.

UNIT 8 : MINIMUM WAGES ACT 1948 (Act XI of 1948)

Structure

- 8.0 Objectives
- 8.1 Introduction
- 8.2 Thrust of the Act
- 8.3 Salient features of the Act
- 8.4 Theories of Wages
- 8.5 Different concept of wages
- 8.6 Fixation and Revision of Wages
- 8.7 Payment of wages
- 8.8 Authorities under the Act
- 8.9 Penal Provisions
- 8.10 Conclusions
- 8.11 Meaning of few important words
- 8.12 Terminal Questions
- 8.13 Books for reference

Dear student, in unit I you were able to know the basic concepts governing wages and the Payment of Wages Act 1936 in detail. In this unit you shall know more about wages, different concepts and theories of wages and the minimum wages Act 1948.

8.0 OBJECTIVES

After studying this unit you shall be in a position to;

- Know the meaning of wages and minimum wages
 - Understand theories of wages
 - Evaluate how minimum wages are fixed,
 - Know the authorities and their powers
 - What happens if the law is not respected
-

8.1 INTRODUCTION

Workmen and employers are like the two wheels of a chariot in an industry. Any industry can function smoothly if there is amity and good relationship between the workmen and the employers. Frequent misunderstandings and differences lead to stoppage of work and production. The industry suffers a setback due to various factors like strikes, lockouts etc which are directly resulting from strained relationship of employers and workmen. The reasons for stoppage of work may be numerous. But 'wages' can be said to be one of the prime reasons for the difference. Inadequate wages may lead to disputes in industries. Small matters may lead to big differences and ultimately result in closure of an establishment.

Amicable relationships must be sustained between the workmen and the employer. Several statutes dealing with labour relations emphasize much on their relationships. Almost every statute dealing in labour jurisprudence contains provisions ensuring better relationships between the employer and the employed. The Industrial Disputes Act 1947, payment of Wages Act 1936, payment of Bonus Act 1965, Employee's state Insurance Act, Workmen's compensation Act, payment of Gratuity Act, all deals with establishment of peaceful environment in industries.

The payment of Wages Act and the Minimum wages Act must be read together to understand the concept of wages in its entirety. The two Acts cannot be separated.

8.2 THRUST OF THE ACT

As the title itself indicates, the Act deals with the Minimum Wages. The Act is also labour friendly and protects him from unreasonable difficulty or dispute. The Act itself provides for fixation of price termed a 'Minimum wages' to be payable to every workman. The Act secures the welfare of workers by fixing minimum wages for certain occupations, thus preventing exploitation of workmen.

It is the right of every workman to realize the fruits of his sweat and labour and it is the duty of employer to pay him appropriate wages. The International labour organization has also emphasized this right in its various conventions. The Payment of Wages Act has ensured security and the periodical and regular payment of wages. But regular payment alone will not meet the requirement of social justice. Adequate wages must also be provided to enable a workman to maintain himself and his family.

The Act provides for fixing minimum rates of wages in certain employments to which provisions of this Act apply. This is because the workers have low bargaining power. Hence, the state ensures minimum wages. The state can go to the extent of recovering arrears with penalty.

The constitution of India under the Article 21 guarantees 'Right to life' to every individual. The judiciary has expanded the term to include "decent living" and "living beyond mere animal existence". Minimum wages ensures decent living. The Directive Principles of state policy (Part IV) on the other hand imposes responsibility on the state to secure living wages to labourers, which covers not only bare physical subsistence but also maintenance of health and decency (Article 43). The UN declaration on human rights also recognizes this concept. In view of the above the legislature enacted the Minimum Wages Act 1948 in India. This Act is very important particularly in a developing country like India because people in India face the problem of unemployment and may offer to work even on starvation wages. The Act prevents employment of sweated labour in the general interest of the society.

8.3 SALIENT FEATURES OF THE ACT.

The salient features of the Act can be listed as follows: -

- This Act is applicable to the whole India including state of Jammu and Kashmir provides for fixing of minimum time rate of wages, overtime rate, guaranteed time rate for different occupations, localities or classes of work & for adults, adolescents, children & apprentices.
- Prescribes that minimum rate of wages consisting of basic rate of wages and cost of living allowance. And wages to be paid in cash or sometimes in kind in particular cases.
- Entitles the appropriate Government to fix the number of hours of work per day and scheduled employment.
- Provides for appointment of authorities and inspectors.
- It is welfare legislation.
- Provides for penalties for non-compliance to the Act.

8.4 THEORIES OF WAGES

The pride of formulating theories goes to Prof. ADAM SMITH who wrote a chapter on wages of labour in his celebrated classic "Wealth of Nations". The important theories are:

- Deduction theory
- Subsistence theory
- Cost of production theory
- The wage fund doctrine
- Theory of marginal productivity
- Determinants theory

We shall try to learn these theories in brief (for a detail study you can refer Labours and Industrial Laws by V.G. GosWami)

(a) Deduction Theory

According to this theory, wages are what is left to the workers out of the product, after rent, profit & interests have claimed their shares. Production involves land, capital, labour and management and the whole product is liable to be distributed among all the above constituents proportionately in accordance with the terms & conditions agreed upon.

Capitalists get interest on the capital invested in the industry, the rents are paid to the landowner, the entrepreneur gets profits and labour gets wages. Deduction theory projects that wages are nothing but the residue, which remains after distribution of the production into other constituents of production.

(b) Subsistence Theory

There is a constant bargain between the capitalists and workers. Labourers desire to get as much and the master's give as little as possible. Adam Smith considers what this minimum level must be. According to him Minimum wages must be double his own maintenance in order to maintain a family. Only where a labourer earns something more than what is exactly necessary for maintenance of himself, he shall also maintain his family. Adam Smith goes on to enquire why wages are different in different countries. Increase of capital increases the funds, which are destined to the payment of wages, and also increases the demand for labour.

(c) Cost of Production Theory

Ricardo developed subsistence theory in its rigid form. He says that the natural price of labour depends upon the price of the food, necessaries, convenience required for the support of the labourer

and his family. With the rise in the price of food and necessaries, the natural price of labour will rise; with the fall in their price, the natural price of labour will fall. This is because the power of the labourer to support himself, and the family which may be necessary to keep up the number of labourers, does not depend upon the quantity of money which he may receive for wages, but on the quantity of food, necessaries and conveniences become essential to him from habit which that money will purchase.

(d) The Wage Fund Doctrine

The wage fund doctrine developed out of the supply and demand approach of the classical economists to conditions of developing capital accumulation. Wages depend upon the demand & supply of labour; or, as it is often expressed, on the proportion between population and capital. Population must have been taken to mean the number only of the labouring class, or rather of those who work for hire, one has to remember John Stuart Mill for the development of this theory.

(e) Theory of Marginal Productivity

Marginal productivity theory was developed by a number of writers in the last quarter of 19th century, According to this theory. There was a certain quantity of labour seeking employment; the wages at which this labour could secure employment in a competitive labour market was equal to the addition total to production that resulted from employing the marginal unit of that labour force. The marginal productivity is additional product resulting from using an additional unit of labour together with a constant amount of other factors of production.

(f) Determinants Theory

According to this theory wage share is the residue after the capitalists have taken their share out of the total output in accordance with their propensity to invest and desire for consumption. Prof. Kalecki and Kaldor have advanced this theory. The theory takes into account the imperfections and degree of monopoly prevalent in an economy in any period.

In a market economy, characterized by the existence of competition among entrepreneurs to sell their product, among labourers to sell their labour power, and between employees & labour to settle the price of labour, the level of wages of the workers varies between the price of subsistence, that is requirements for the maintenance, and continued procreation of labour & the provision of such historically and socially needed things as have tended to become an indispensable part of their subsistence standard & the broadly estimated value of the contribution to production made by the additional labour employed. The actual level where the wage level comes to rest or settled in between these two, lowest & upper most levels, is decided by the collective bargaining power of the employers & the labourers. Collective bargaining plays an important role in determination of wages.

8.5 DIFFERENT CONCEPTS OF WAGES

Wages can be termed as the consideration for labour. The term "Minimum Wages" cannot be defined clearly because it is impossible to lay down a uniform minimum wage for all the industries throughout the country.

Wages are the remuneration paid to the labourers for work done or service rendered to the employer. Wages constitute the earnings for the workman and determines his standard of living.

The International labour organization, which has since its inception given inspiration to numerous measures of social justice and social security in many countries including India recognized the importance of the problem of wages and provisions of an adequate living wage and recognition of the principle of equal remuneration for work equally done.

Under Section 2(h) "Wages means all remuneration"

Capable of being expressed in terms of money which would, if terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance but does not include any house accommodation, supply of water, light and medical attendance or contribution towards pension fund, social insurance, traveling allowance or gratuity.

To sum up, the term wages has been wisely defined to include all remuneration and payment payable to an employee except expressly excluded in the Act.

Now Let us look at different kinds of wages:

(a) Living Wage

The term living wage has not been defined in the provisions of the Minimum Wages Act. The South Australian Act of 1912 defines living wage, as "a sum sufficient for the normal & reasonable needs of the average employee living in a locality where the work under consideration is done or is to be done". The Commonwealth Arbitration Court in the famous HARVESTER case has visualized living wage as a sum adequate to satisfy the normal needs of the average employee regarded as human being in the civilized community.

"A basic wage paid to an adult male employee what is sufficient to maintain a average health, strength and competence and his wife & a family and children in a fair & average standard of comfort. Living wage consists of amount to meet necessities, comforts & luxuries, the quantum of goods & services which an individual considers necessary for decent existence".

In India, there is no statutory definition of living wage. The Fair Wage committee points out that it was not possible to fix a living wage as contemplated by the various authorities in context of the present low level of our National income.

The decisions of various Courts give us the meaning and definition of living wage. It is observed that at the bottom of the ladder there is minimum basic wage, which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above the fair wage is the living wage. It is a wage, which will maintain the workmen in the highest state of industrial efficiency, which enables him to provide his family with all the material things which are needed for their health & physical well being, & will be enough to enable him to qualify to discharge his duties as a citizen.

Living wage provides for better living conditions for workmen. This will also increase the Nation's wealth and income, but it makes unreasonable inroads on the profits of the employer. Living wages differ from person to person and from trade to trade. But the main idea is that every workman must get a wage that will maintain him in the highest standard of industrial efficiency and enables him to provide his family with all the material things needed for health and physical well-being.

(b) Fair Wage

Prof. Kothari states that a wage level lower than living wage but higher than minimum wage is "fair wage". J. Bhagwati in Express Newspapers Ltd., V/s Union of India observed that Marshall would consider the rate of wages prevailing in an occupation as "fair" if it is about on level with the average payment for task in other trades, which are of equal difficulty, & disagreeableness, which require equally rare natural abilities & an equally expensive training.

Fair wage is between minimum wage & living wage. The lower limit of fair wage would be minimum wage and the upper limit is living wage. The fixation of fair wage is dependent on

- Productivity of labour
- Prevailing rates of wages in same or similar occupation or locality
- The level of national income and its distribution; and
- The place of the industry in the economy of the country

(c) Minimum Wage

The concept of minimum wages was adopted by the Committee on fair wages. Accordingly, a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. The minimum wage must provide for some measure of education, medical requirements and amenities.

The committee on fair wages suggested that there must be statutory minimum wage. statutory minimum wage means the wage prescribed by the statute itself covering more than what actually is required for bare subsistence of the workman. It may be higher than the subsistence minimum wage. India being a developing country has very low National income and huge population suffer from unemployment.

Today it is the statutory duty of the Employer to pay minimum wages to all workmen in the industry, which falls within the coverage of the Act. Failure to pay statutory minimum wages attracts penal provisions and the employer will have to face the consequences thereof.

It would be worthwhile to study a few cases on the concept of minimum wages. In Karnataka Film Chamber of Commerce V state of Karnataka, (1987) ILLJ 182 at P 206 (Kar), (it has) been observed that section 4 of the Act is a definite indication that basic wage is an integral part of minimum wage. Section 4(1) postulates that the minimum wage fixed or revised by the appropriate government under section 3 may consist of a basic rate or wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the Appropriate Government may direct.

In Jaswanth Ra1 Beri V state of punjab (AIR 1958 Punjab 405}, it was held that, "where an inclusive rate has been fixed including a basic rate of wages & cost of living allowance, this is in accordance with law. The fixation of an all-inclusive rate of minimum wages is legal.

In Bijoy Cotton Mills V state of Ajmer (AIR 1955 SC 33), the supreme Court in very categorical terms said that the employer had no right to carry on the business without the payment of statutory minimum wages to workmen if such wages were fixed duly under the Minimum wages Act 1948. The Supreme Court said that even if the industry would face closure on the ground of payment of minimum wages, the industry would not be permitted to pay wages to workmen less than the minimum wages.

The above view was reiterated by the Supreme Court in Express Newspapers Ltd., V/s Union of India (AIR 1955 SC 578) and in Crown Aluminum Works V/s their workmen (AIR 1958 SC 30).

It is submitted that The Minimum Wages Act is a beneficial piece of legislation, which protects the living conditions of the workers employed at the lowest level of wages.

The Act ensures transparency at various levels. , Contravention of the provisions attract penalty in the form of fines. The fine amount prescribed is very low. It is therefore suggested that there should be an enhanced amount or rine so that it deters the employer in violating the provisions of the Act. There is scope for improvements.

8.6 FIXATION AND REVISION OF WAGES

The statutory duty to fix wages is cast upon the appropriate Government by virtue of Section 3 of the Act. The Appropriate Government shall fix the minimum rate of wages payable to an employee employed in an employment specified in Part I or Part II of the schedule and in an employment added to either part by notification under section 27. The Appropriate Government may in respect of employees employed in an employment specified in Part II of the schedule, instead of fixing minimum rates of wages under this clause for the whole state, fix such rates for a part of the State or for any specialised class or classes of such employment in the whole state or part thereof.

The Appropriate Government shall also review the wages at such intervals as provided in this Act, not exceeding 5 years. If the Appropriate Government fails to review the minimum rates of wages fixed by it within an interval of 5 years it may do so after the expiry of 5 years, if necessary and until the wages are so revised, the existing minimum rates before the expiry of 5 years shall continue to be in force.

The Appropriate Government may refrain from fixing minimum rate of wages in respect of any scheduled employment in which there are in the whole state less than 1000 employees engaged in such employment.

It has been provided under the provisions of section 3(2) that the appropriate government may fix

- (a) A minimum rate of wages for time work
- (b) A minimum rate of wages for piece work
- (c) A minimum rate of remuneration to apply in case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis
- (d) A minimum rate, whether a time rate or piece rate to apply in substitution, for the minimum rate which would otherwise be applicable in respect of over-time work done by employees.

Section 3(3) further provides that in fixing or revising the minimum rates of wages, different minimum rates may be prescribed for;

- (i) Different scheduled employments
- (ii) Different classes of work in the same scheduled employment
- (iii) Adults, adolescents, children & apprentices
- (iv) Different localities

(B) Different minimum rate wages may be fixed by or anyone or more of the following wage periods namely;

- (i) By the hour
- (ii) By the day
- (iii) By the month
- (iv) By such other larger wage period as may be prescribed.

A couple of case-files can be studied under this provision. In **M.C.Mehta V state of Tamil Nadu (AIR 1991 SC 417)** the Supreme Court expressed the 'view that minimum wage for child labour in factories wherein manufacturing process of matches and fireworks should be fixed. It took note that tender hands of the young workers are more suited to sorting out the manufactured products and process it for the purposes of packing. In consideration of their special adaptability at least 60% of the prescribed minimum wage for an adult employee in the factories doing the same job should be given to them.

In Jyothi Home Industries V/s state of Karnataka, the question for consideration was whether the appropriate government can fix guaranteed remuneration under this Act, for the day on which the employer is unable to give work. It was held that the Appropriate Government can fix minimum wages for hours actually worked by the employee and if he is not in a position to fulfill his part of the contract to work on account of the facts that the employer does not offer him the necessary raw material to work, he would be entitled to remuneration under section 3(2) (c). This view is supported by other provisions like Section 13 & 20 of the Act. Thus the government can fix guaranteed remuneration.

8.7 PAYMENT OF WAGES

Wages shall be paid to every workman as provided in the Act. The wages can be paid either in cash or in kind. Section 11 provides that "Wages shall be paid in cash. However wages may be paid wholly or partly in kind if the Appropriate Government authorizes to do so on the ground of prevailing customs in that area"., The government has power to determine the mode of payment of wages. If it is to be paid in kind, a notification in the official gazette is essential. The cash value of wages in kind and of concession, in respect of supplies of essential commodities at concession rates shall be estimated in the manner prescribed.

Section 12 puts a statutory obligation on the employer to pay the minimum rates of wages fixed by the Appropriate Government in any scheduled employment. The employer has to pay in accordance with the rates fixed without any deductions. However authorized deductions are permissible.

The employer should maintain records and registers giving details of employees employed by him, work performed by them, wages paid to them, receipts given by them and all such particulars (Section 18). This provision is added to the Act to provide transparency. The employer cannot misappropriate funds or contravene the provision.

It is interesting to note that "not to pay" wages less than minimum rates of 'wages fixed, close not prevent the employer from paying a wage higher than the statutory minimum.

(a) Overtime work (Section 14)

Every employer should pay to every employee overtime wages for every hour or part of an hour worked in excess of normal working hours. The overtime rate should be calculated at the rate fixed under the Act' or under any other law for the time being in force, whichever is higher.

On the other hand, the Factories Act also provides for payment of extra wages for overtime work. (Section 59 of the Factories Act)

In Y.A.Mamarde V Authority under MoW' Act (AIR 1972 SC 1721), the question was whether the phrase "ordinary rate" means double the remuneration the workman in fact ordinarily receives or double the minimum rate fixed for him under the Act. It was held that the minimum wages for the overtime work need not be confined to double the minimum wages fixed by the Act, but may justly be fixed at double the wages ordinarily received by the workman.

In Municipal Council, Hatta V Bhagat Singh (AIR 1998 SC 1201) the Court held that the provision relating to overtime work is not attracted in case of employees getting better wages in other statutory rules. section 14 of Minimum Wages Act provides for payment of overtime only to the employees getting minimum rate of wages under the Act and not to those getting higher wages.

Overtime work means extra work beyond the normal working hours. Where a workman works for extra hours he puts in more labour and gets drained out of his energy. Much of his energy is spent out and in return he must get an equivalent benefit. Law contemplates that this extra energy spent be equated with an extra wage. The Act again stresses that it is a social welfare legislation to be construed beneficially for the betterment of the working class.

(e) Piece work

Where an employee is employed to do a piece work for which minimum time rate & not a minimum piece. rate has been fixed by the Act, the employer should pay to such an employee wages not less than the minimum time rate.

(c) Work-less than normal working day (Section 15)

If an employee whose minimum rates of wages have been fixed by a day will be entitled to receive wages in respect of work done by him even if he has worked for a period less than the requisite number of hours constituting a normal working day.

But he will not receive wages if the failure to work is caused by his unwillingness to work & not by the omission of the employer to provide work.

(d) Payment of undisturbed amounts due to employees

If the amount of minimum wages could not be or cannot be paid to the employee on account of his death before payment or on account of his whereabouts not being known, the amount should be deposited with the prescribed authority. He will take steps to disburse the amount to the person entitled to the amount in such manner, as prescribed." Person entitled" means the dependants of such person like wife, uncles, aged parents etc.

8.8 AUTHORITIES UNDER THE ACT

It is well known that a statute without an implementing agency is of no use. The Minimum wages Act provides for such a mechanism to see that the provisions of the Act are not contravened. The two most important authorities constituted under the Act are Inspectors and Claims and Minimum Wages Authority. Both these authorities are constituted by the Appropriate Government by notification in the official gazette.

(a) Inspectors

Section 19 enumerates the powers of inspectors. Followingly:

- (a) Power to enter at all reasonable hours any premises or place where employees are employed or work for, the purpose of examining any register record of wages or notices required to be kept or exhibited by or under this Act or rules made there under.
- (b) Power to examine any person whom he finds in any such premises or an employee to whom work is given out therein.
- (c) Power to require any person to give any information, which is in his power to give.
- (d) Power to seize or take copies of registers, record, of wages or notices which he considers relevant.
- (e) Such other powers prescribed.

(b) Claims authority

The other authority under the Act is claims authority. section 20 empowers the Appropriate Government to appoint an authority by notifying in the official gazette. The authority has power to hear and decide the following claims.

- (i) Claims arising out of payment of less than minimum rates of wages.
- (ii) Claim in respect of payment of remuneration for days of rest.
- (iii) Claim in respect of payment of remuneration for work done on such days.
- (iv) Other claims at overtime rate.

The time limit to file a claim application is 6 months from the date on which the minimum wages become payable. The authority has powers similar to a civil court constituted under code of civil procedure.

(c) Authority to be Quasi-Judicial in nature

It is submitted that the Minimum wages Authority constituted under the Act is quasi-judicial in nature. 'Quasi' means 'as if' which means it partakes the nature of a judicial authority but not in its strict & fullest extent.

The Authority has power to hear the applicant and the employer. An inquiry may also be conducted. The Authority appointed under section 20 shall have all the powers of a civil court under Code of Civil procedure for the purpose of taking evidence & enforcing attendance of witnesses and compelling the production of documents and other authorities of a civil court.

It was held in Jyothi Home Industries V state of Karnataka [(1983) ILLJ 201], that the claims Authority under the Act has power to hear all claims arising out of payment of less than the minimum wages or in respect of payment of remuneration for days of rest or for work done.

A single application can be filed in respect of any number of employees employed in which the minimum rates have been fixed.

The Authority may direct payment of compensation by the employer to the employee before the disposal of application on the other hand if it is found that the application is malicious or vexatious, the Authority may impose a penalty on the applicant not exceeding 50 rupees. The directions made by the Authority will be final.

8.9 PENAL PROVISIONS

The Act deals with the offences & penalties in sections 22, 22A, 22B & 22C. All the offences under the Act are non-cognizable offences.

Section 22 stipulates that the employer shall be punishable with imprisonment for a term, which may extend to six months or with fine, which may extend to five hundred rupees or with both if he-

- (i) Pays to any employees less than the minimum rates of wages fixed for the employees class of work or less than the amount due to him under the provisions of this Act; or
- (ii) Contravenes any rule or order under section 13.

Section 22A stipulates that any employer who contravenes the provisions of this Act and if no other penalty is provided for such contravention by this Act, he may be punished with fine which may extend to 500 rupees.

Section 22C provides for penalty where the offence is committed by a company. The person in charge of the affairs of the business of the company shall be liable for punishment. However if he proves that the offence was committed without his knowledge or in spite of exercise of due diligence to prevent the commission of the offence, there shall be no liability.

Section 23 on the other hand provides for exemption of employer from liability in certain cases. where the employer is charged under this Act for any offence, he is entitled to file a complaint against the actual offender. The actual offender shall be given notice and brought before the court at the appointed time for hearing the charge. Both of them shall be tried together. If the commission of offence is proved the employer shall be liable unless he proves that he had used due diligence to enforce execution of the Act and that the said other person committed the offence without his knowledge or consent. The other person shall then be punished and convicted as if he were an employer and he shall be liable absolutely and the employer shall be discharged.

The penal provisions thus restrain the employer contravening the provisions of the Act. Though this acts as a deterrent, the increasing number of cases against various employees goes on to show that the deterrence is insufficient. There is therefore a great need to enhance the punishment so that the employees may take a second thought before committing any breach of the provisions.

8.10 CONCLUSION

Under this unit we were able to understand the meaning of minimum wages along with the theories of wages. These theories are given to make you understand on the rationale behind firing wages. The Court has reiterated the Principle that right to life includes right to wages in i turn life to earn livelihood.

The Government have been Empowered to fix up minimum wages. This rate shall be meticulously followed. The Executive staff like inspectors and claims authority have been established to ensure the meticulous implementation of this Law. However it is suggested to strengthen the penal provisions.

8.11 KEY WORDS

- 1) Wages: Salary, remuneration or other reward paid to the workmen in consideration of labour.
- 2) Arbitration: Process of settling a dispute by referring the matter to a third person.
- 3) Statutory: pertaining to statute; provided under the statute.
- 4) Penal: pertaining to punishment.
- 5) Reiterate: To repeat again and again.
- 6) Contravene: To violate.
- 7) Adolescent: A person who is between 15 to 18 years of age.
- 8) Apprentice: Person learning the rudiments of the trade.
- 9) Code of Civil Procedure: A Statute relating to the procedure to be followed in civil cases.
- 10) Non-cognizable offence: An offence in which a police officer cannot arrest without a warrant.
- 11) Charge: Official imputation of commission of an offence.

8.12 TERMINAL QUESTIONS

1. Give a note on different theories of wages.
2. Write descriptive note on;
 - (a) Fixation of wages
 - (b) Revision of wages
 - (c) Payment of wages
3. How are the authorities constituted under the Act? Briefly discuss their powers and functions.
4. Discuss the provisions relating to offences and penalties under the Act.
5. What is minimum wages? How it is fixed?

8.13 BOOKS FOR REFERENCE

As prescribed the other units.

UNIT 9 : THE PAYMENT OF BONUS ACT, 1965

Structure

- 9.0 Objectives
- 9.1 Prelude
- 9.2 Operations and Application
- 9.3 Some important Definitions
- 9.4 Eligibility and disqualification for bonus
- 9.5 Payment of bonus
- 9.6 Adjustments against Bonus
- 9.7 Deductions from Bonus
- 9.8 Time limit and recovery of Bonus
- 9.9 Authorities under the Act
- 9.10 Offences and penalties
- 9.11 Let us sum up
- 9.12 Key-words
- 9.13 Terminal Questions
- 9.14 Books for reference

9.0 OBJECTIVES

After studying this unit you shall be in a position to;

- Know the purpose of this Law
- Know why and how Bonus is payable
- Know the mode and procedure to pay Bonus
- Know the executive authorities established under this law and their powers.
- Know the penalty prescribed for non-compliance to the Law.

9.1 PRELUDE

Dear Student, in unit -2 you were able to understand the concepts and theories of wages and the Minimum Wages Act 1948 in detail. In this unit, you shall understand the finer aspects of wages, the bonus under the Payment of Bonus Act 1965.

Workmen get wages as a consideration for their service. It is clear that statute provides for minimum wages to be paid for different categories of work. At the same time industry gains more and more profit as the labour works. This surplus profit goes to the entrepreneur. If workers are given a share in this surplus, perhaps workmen work better with greater spirits and enthusiasm. This extra remuneration or extra amount that a worker gets is called as BONUS. Bonus is not the result of direct labour but the result of extra profit. Bonus may be paid at any interval be it for festivities anniversaries or otherwise. But anything not regulated may lead to dispute. It may also happen that the workmen may demand bonus at their sweet will which is not correct. Hence, law covers this aspect also. The Bonus payable to workmen is regulated by The Payment of Bonus Act, 1965.

The Bonus is paid to employees in addition to wages. Earlier there was no law relating to the payment of bonus and it was dependent on the whims and fancy of the employer. The first evidence of payment of bonus is found in the Textile industry in July 1917. Bonus was paid as "war bonus" to the employees owing to war conditions. Later on the vigorous industrialization and formation of trade unions educated the entire mass of workers regarding their rights. After independence, the industrial disputes arose in large numbers mainly in respect of payment of bonus. Need was felt for codification of law in this branch. The result was enactment of payment of Bonus Act in 1965.

The Act has been enacted for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity. The Act imposes statutory obligation on the employer of a factory or other establishments to pay bonus to the employees eligible under the provisions of the Act. The Act provides for minimum and maximum bonus payable, eligibility conditions and disqualifications for bonus, time payment, appointment of authorities and related matters.

9.2 OPERATION AND APPLICATION

This is a central Act. This Act is operative in whole of India. It is applicable to every factory and every establishment in which twenty or more persons are employed on any day during an accounting year. However, the appropriate Government may, by notification to any establishment after giving a notice with two months time.

9.3 SOME IMPORTANT DEFINITIONS

(a) Allocable Surplus [Section 2(4)]

The Act defines allocable surplus as follows:

“Allocable Surplus” means

- (i) In relation to an employer, being a company other than a banking company which has not made the arrangements prescribed under the income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven percent of available surplus in an accounting year;
- (ii) In any other case Sixty percent of such available surplus.

This definition is very essential in view of the Act since the payment of Bonus directly depends on the allocable surplus. Statute has fixed this rate as 67% and 60% as the case may be.

(b) Available surplus -Sec 2(b)

“Available Surplus” means the available surplus computed under section 5. Accordingly; the available surplus is the gross profit of that year after deducting the following sums:

- (i) Any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income tax Act or in accordance with the provisions of the Agricultural Income Tax law as the case may be;
- (ii) Any amount by way of employment rebate or investment allowance or development allowance which the employer is entitled to deduct from his Income under the Income Tax Act.
- (iii) Any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- (iv) Such further sums as are specified in respect of employer in the Third Schedule.

(c) Gross Profits Section 2(18)

Gross profits means the gross profits calculated under section 4.

Section 4 is relating to computation of gross profits. It is as follows;

The gross profits derived by an employer from an establishment in respect of the accounting year shall -

- (i) In the case of banking company, be calculated in the manner specified in the First schedule.
- (ii) In any other case, be calculated in the manner specified in the second schedule.

(d) Employee (Sec 2 (13))

Means any person (other than an Apprentice employed on a salary or wage not exceeding three thousand and five hundred rupees per mansem in any industry to do any skilled or unskilled manual, supervisory managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

(e) Employer (Sec 2 (14))

In a factory the owner or occupier of the factory, including the agent of owner or occupiers., legal representative of" the deceased owner or occupier, manager or a person or authority who has ultimate control over the affairs of" the establishment.

(f) Factory (Sec 2 (17))

It shall the same meaning as defined in Sec 2(m)of the factories Act 1948.

(g) Salary or Wages (Sec 2 (21))

All remuneration in relation to employment including D.A payable, by express or implied contract. It does not include, remuneration for overtime work, value of house accommodation, supplying of light, water medical facilities etc. Traveling allowance, bonus contribution towards provident fund or gratuity or other retirement benefits or commission.

9.4 ELIGIBILITY AND DISQUALIFICATION FOR BONUS

The statute imposes duty on every employer to pay his employee bonus in accordance with the provisions of the Act in every accounting year provided the employer has worked in that establishment for not less than thirty working days in that year (section 8).

On the other hand the employer is not bound to pay the bonus if" the employee is dismissed from service. However the dismissal must be due to anyone of the following reasons (section-9).

- Fraud
- Riotous or violent behaviour while on the premises of the establishment
- Theft, misappropriation, sabotage of any property of the establishment

The statute provides for both eligibility and disqualifications. The sections 8 & 9 are to be read together in order to pay bonus to every workman-Bonus is to be paid every accounting year at the rates prescribed by the statute itself. The Bonus Act as a whole code speaks on the sole subject of profit based bonus but is silent on different kinds of bonus such as oriented bonus or customary bonus.

In project manager, Ahmedabad project, ONGC Sabarmati V Sham Kumar Sahgal (by legal Representatives) (1995) 1 LLJ863 (GY), It was held that when an employee is suspended it cannot be said that such an employee did not work for the establishment. The term "worked" used in sec B means ready & willing to work" therefore when an employee is prevented from working by an overt act on the part of an employer which is in service then the reasonable inference is that the employees statutory eligibility for bonus within the meaning of Section B cannot be said to have been lost.

In Himalaya Dray Co. Makali V/s II Additional Labour Court, Bangalore [(1986) 2 Lab LJ 45 (kar)] some of the workmen who were dismissed for misconduct claimed bonus, which the management denied. Section 9 was mentioned and the contention was that the workmen were disqualified for bonus. It was held that if a dispute regarding bonus for 3 consecutive years is pending and the workmen is dismissed for misconduct it is not proper to extend the scope of Section 9. The workmen were entitled for bonus.

This view was contradicted in **M/s Sriram Bearings Limited V/s Presiding Officer, Labour Court, Ranchi & Others (1986) 2 Lab LJ 459 Patna**. The court held that if an employee is dismissed from service, he stands disqualified from receiving any bonus under the Act and not the bonus only of the accounting year.

In short the liability to pay bonus is solely upon the owner of the establishment. The employer is liable to pay bonus to every employee who has put in a minimum service of 30 working days in that year, who is not an apprentice, who has not been dismissed from service for fraud or criminal offences and whose salary does not exceed Rs.2500/-.

9.5 PAYMENT OF BONUS

The payment of Bonus Act 1965 provides for payment of bonus to persons employed in establishments which fall within the coverage of the Act on the basis of profits or on the basis of production or productivity.

Establishment according to the Act includes all departments and branches that form a part of an establishment. But where any branch or department maintains a separate profit & loss account and

balance sheet, it shall -be a separate establishment. Every establishment which is making a profit in the accounting year has to pay bonus to its employees.

The amount of bonus payable should not be less than the minimum bonus or greater than the maximum bonus fixed under the statute. The mode of payment is also prescribed. Small amounts should be paid in cash only while other amounts can be paid either in cash or through cheque drawn on any scheduled bank at the convenience of the employees.

In Dishergah power Supply Company Ltd. Calcutta & (another V Their Workmen (1987) 1 Lab LJ 53 (SC) the workmen of two companies were paid bonus for years 1965-66 to 1970- 71 on the basis of an agreement. In respect of the year 1971-72 the workmen claimed bonus equivalent to 3 months basic wages as on 31st March 1972 as bonus payable under the Act. The claim was resisted by the management, which was ready to pay only the minimum bonus. In consequence of conciliation the management agreed to pay as bonus and amount equal to 3 months basic salary and agreed to refer the demand for adjudication. The Tribunal found that there was no case for bonus as there was no available surplus during the year and therefore only minimum bonus is to be paid.

In Indian Cable Co. V Workmen AIR 1972 SC 2195, the court held that though the officers were drawing salary between Rs.750 and Rs.1600 per month, they are employees under Section 2(13) and eligible for bonus. But for the purpose of calculating the bonus, the salary will be taken at the maximum of RS.750 per month and will be eligible for bonus calculated on that basis.

The Act enables and compels the employer to pay bonus every year, even in the year where there has been a loss sustained by the establishment. The compulsion with which the employer is charged to pay at least the statutory minimum bonus to his employees every year is a reasonable restriction in the public interest and not a violation of the provisions of Constitution of India. Bonus payable is also treated as wages and is not liable for attachment by the order of the court.

(a) Minimum and Maximum Bonus

Section 10 of the Act provides for the payment of minimum bonus. The employer is bound to pay every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33% of the salary of wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not he has any allocable surplus in that accounting year. The employer has to pay bonus at this minimum rate even if the establishment is suffering losses. Failure to comply with the provisions attracts punishment under the Act in addition to payment of minimum bonus to his employees.

In case of workers other than adults that is workers below 15 years of age, the minimum bonus is to be paid at 8.33% or sixty Rupees whichever is higher.

(b) Maximum Bonus

Maximum bonus payable is also regulated by the provisions of the Act. here in any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer should in lieu of such minimum bonus be bound to pay to every employee in respect of that accounting year bonus which will be an amount in proportion to the salary or wages earned by the employee during the accounting year subject to the maximum of 20% under normal circumstances. In computing the allocable surplus or the payment of higher than the minimum bonus the amount which has been set on or set off in the preceding four accounting years should be taken into account in accordance with the provisions of the Act. But the employer is not precluded from paying the bonus higher than the maximum bonus of twenty percent provided he does not infringe the provisions of set on and set off under the Act.

(c) Set on and Set off of allocable surplus

In order to pay the bonus continuously and regularly every year, the Act introduces a scheme of set on and set off. Accordingly, where allocable surplus in the accounting year exceeds the amount of maximum bonus of 20% of the total salary or wages of the employees employed in the establishment in that accounting year be carried forward for being set on in the succeeding year and so on upto and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus.

In any accounting year, there is no available surplus or allocable surplus in respect of that year falls short of the amount of minimum bonus of 8.33% payable to the employees in the establishment, and there is no amount or sufficient amount carried forward and set on, which could be utilized for the payment of minimum bonus, then such minimum amount or deficiency as the case may be, will be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of the fourth accounting year.

If any amount has been carried forward and set on or set off, then in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year, in the chronological order should be first taken into account for the payment of bonus. The fourth schedule of the Act gives the rule relating to set off.

(d) Calculation of bonus with respect to certain employees

In case of employees whose salary exceeds Rs.2500 per men sum, the bonus payable to such person is calculated as if his salary or wage were two thousand & five hundred rupees per month (section-12).

9.6 ADJUSTMENTS AGAINST BONUS (SECTION-17)

Certain adjustments are allowed as against bonus. These are customary or interim bonus payable to the employees. section 17 stipulates that in any accounting year, an employer has paid Puja bonus or other customary bonus to an employee or where an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year & the employee shall be entitled to receive only the balance.

Any disputes regarding the payment of Bonus, it shall be deemed to be an industrial dispute under the Industrial Disputes Act and shall be decided in accordance with the Industrial Disputes Act.

In Hukumchand Jute Mills V/s 2nd Industrial Tribunal W.B (AIR 1979 SC 876), the Union claimed customary bonus and it was contended that the payment of such a kind of bonus was negated by virtue of provisions of the amending Act of 1976. It was held that the Amendment has left section 17 intact and as long as this section is concerned, it refers to puja bonus and other customary bonus as available for deduction from the bonus payable under the Act, thus made a clear distinction between the bonus payable under the Act and puja bonus or other customary bonus.

In Himalaya Drug Co. Matali V/s II Additional Labour Court Bangalore, it is held that if an employee is paid puja or customary bonus before he is found guilty of the act of misconduct, it will not be open to the employer to recover that amount on the ground that he had a right of adjustment under section 17 because disqualification in section 9 applies to bonus receivable under the Act and not to puja or customary bonus.

The Bonus Act is a complete code on the subject of profit-based bonus. The Act provides for statutory bonus, which is nothing but profit bonus. The Act also avoids unduly heavy burden under different heads of bonus. Bonus is payable only to employees of certain establishments and not all the establishments.

9.7 DEDUCTIONS FROM BONUS

Section 18 provides for deduction of certain amounts from Bonus. Deductions can be made in any accounting year if the employee is guilty of misconduct causing financial loss to the employer. It shall be lawful for the employer to deduct amount of loss from the amount of bonus payable by him to the employee under the Act and refund the balance if any.

9.8 TIME LIMIT AND RECOVERY OF BONUS

Where any dispute arises regarding payment of bonus pending before any authority under section 22, the bonus is to be paid within a month from the date on which the award becomes enforceable or the settlement comes into operation. In other cases the time limit prescribed is eight months from the close of the accounting year.

The Appropriate government may on the basis of application made to it and for sufficient reasons extend the period of 8 months to such further periods as it thinks fit. But the total period so extended shall in no case exceed two years (section-19).

Recovery of Bonus

Bonus, as stated above is to be paid within the time: limit provided under Section 19 of the Act. However if the employer fails to pay bonus, the employee has every right to claim it. The claim can only be made after the close of accounting year.

The application must be filed to the appropriate government and within one year from the date on which the money becomes payable. This time can be extended even after expiry of one year if the appropriate government is satisfied of genuines of the reason for delay (section-21).

The due amount by way of bonus must be paid by the employer. Failure would result in the issue of a certificate for recovery. The Appropriate government on receipt of application issues a certificate to the collector to recover bonus due as if it were an amount of land revenue.

9.9 AUTHORITIES UNDER THE ACT

Like any other Act, the Payment of Bonus Act has also provided for appointment of authorities. The Appropriate government may by notification in the official gazette appoint such persons as it thinks fit as Inspectors for the purpose of the Act. The inspector shall have jurisdiction over the limits defined by the notification. The inspector is under the Act known as the Inspector of Payment of Bonus and his chief function is to ensure that the provisions of the Act are complied.

The Inspector has following powers

- (i) Power to require an employer to furnish such information, as he may consider necessary.
- (ii) Power to enter any establishment or premises at any reasonable time for the purpose of examination of accounts, books, registers and other documents relating to employment, salary, wages or bonus.
- (iii) Power to examine with respect to any matter relevant to any person, employer or his agent or servant if he has reason to believe necessary for the purposes of the Act.

- (iv) Power to make copies of or to take extracts from any book register or other documents maintained in relation to the establishment.
- (v) Power to exercise any other powers as may be prescribed.

The inspector is however not empowered to require a Banking company to furnish or disclose information or any of its accounts, books or documents which a Banking company cannot be compelled to furnish, disclose, produce or give for inspection under the provisions of section 34-A of the Banking Regulation Act 1949.

9.10 OFFENCES & PENALTIES

The Payment of Bonus Act, 1965 provides for payment of Bonus to employees of certain establishments notified. The Act also provides for maintaining of profit and loss accounts, preparation of balance sheets, auditing of accounts, maintenance of records & registers etc. These provisions ensure that there shall be no misappropriation by the employer & clear transparency is sustained still there is no complete immunity to the workmen.

Where there is an offence, obviously penalty follows. Offences under the Act can be classified into two heads. Offences by the employers and offences by the companies. In case of a Company, the person in charge of conduct of business of the company shall be responsible, unless he proves that he exercised all due diligence to prevent the commission of the offence or that the offence was committed without his consent or knowledge (section-29).

Section 28 of the Act provides for penalty. Any person who contravenes the provisions of the Act or rule or if any person who is directed to comply with the provision, but fails to comply shall be punished with imprisonment for a term that may extend to six months or with fine which may extend to one thousand rupees or with both.

Offences under this Act are non-cognizable. The Court can take cognizance of any offence punishable under the Act only on receipt of a complaint made by or under the authority of Appropriate government or an officer of that government not below the rank of a Regional Labour Commissioner, in the case of an offices of the central Government and not below the rank of a Labour Commissioner or in the case of an officer of the state government specially authorized in this behalf by that Government.

9.11 LET US SUM UP

The Bonus Act acts like a means of incentive and social security. Either way the beneficiary would be the worker. The Act has a balanced approach in awarding a share in profits in the form of Bonus recognizing the contribution of him. One has to observe that payment of Bonus is not an absolute obligation. There are limitations and exceptions prescribed in the Act. Minimum and maximum

amounts are prescribed. Deductions can also be made in bonus. The Executive authorities established under this Act have sufficient statutory powers to ensure that the objectives of the Law have been achieved. However it can be submitted that the employer should be honest to recognize the labour and contribution of employee and reward him suitably. The penalty clause acts like a controlling tool. This Act is well supported by the Judiciary through their judgments.

9.12 KEY WORDS

1. Bonus: An extra amount paid to workmen in addition to wages.
 2. Adjudication: To determine judicially.
 3. Comply: To abide by; to follow.
 4. Surplus: Excess above what is required.
 5. Customary: According to customs, usages and practices.
 6. Cognizance: To take notice of an offence.
 7. Non-cognizable: An offence in which a police officer cannot arrest without a warrant.
 8. Complaint: An allegation made in writing.
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9.13 TERMINAL QUESTIONS

1. Discuss the concept of Bonus in the light of the Payment of Bonus Act 1965?
 2. Write explanatory note on;
 - a) Eligibility for Bonus.
 - b) Disqualification of Bonus.
 - c) Periodical payment of bonus.
 - d) Minimum and Maximum bonus.
 3. Explain Adjustments against bonus and deductions from Bonus?
 4. State in brief the authorities under the Act with their powers and functions?
 5. Briefly state the offences & penalties under the Act.
-

9.14 BOOKS FOR REFERENCE

Same as in Unit - 1

BLOCK - IV :

UNIT 10 : WORKMEN'S COMPENSATION ACT - 1923

Structure

- 10.0 Objectives
- 10.1 Introduction
- 10.2 Payment of Compensation
- 10.3 Disablement
- 10.4 Occupational Disease
- 10.5 Powers of the Commissioners
- 10.6 Controversial Issues
 - 10.6.1 Doctrine of Notional Extension
 - 10.6.2 Doctrine of Added peril
 - 10.6.3 Doctrine of contemporary negligence
- 10.7 Summary
- 10.8 Technical Question and Learning Activities
- 10.9 Books Reference

10.0 OBJECTIVES

After studying this unit you will be able to

- Explain objectives and applicability of labour legislation
 - Explain the provisions relating to payment of compensation
-

10.1 INTRODUCTION

The growing complexity of industry with the increasing use of technology and machinery, and consequent danger to workmen arising from accidents makes all the necessity to have compensation to the workers. Even otherwise human touch is required in the field of labour legislation. It is unfortunate in the history of labour legislation, that employer had not given sufficient protection or shown interest in the welfare of employees. Workmen's Compensation Act is a legislation which has given a solution to workers problems like, injury, or losing any part of the body, fully or partly. This is the reason the company law provides disablement benefit to the workers. This Act imposes an obligation from employers to pay compensation to workers for accidents arising out of and in the course of employment. Probably the need for such a legislation was felt in 1920s largely due to sufferings of labour in those days where the present legislations which protect labour from dangerous hazardous or machinery were not there. In fact the Factories Act 1948, itself provides lot many solutions to solve the problem or to prevent the problems by providing clauses of compulsory fencing or setting up of exhaust fans etc. perhaps this is one of the legislations where labour gets benefit without contributing anything.

10.2 OBJECTIVES

- (a) The Act provides a simple quick and economical mechanism for the recovery of compensation in the case of personal injury and occupational diseases.
- (b) The Act relieves the parties of unnecessary litigation thereby bringing out better relations among them.
- (c) The Act serves as an important measure of social security to cover an important risk of workmen without any contribution by them.
- (d) The act is a social security and social insurance measure for workmen in case of any mishap during and in the course of employment.
- (e) The Act contributes towards making India a true welfare state.
- (f) The Act protects workmen from uncertainty, emergency or any other unpredicted hazards in the course of employment.

- (g) The Act has been enforced as a remedy to reduce the number of accidents in a manner that cannot be envisaged by official inspection.
- (h) The Act mitigates the effects of accidents by providing suitable medical treatment.
- (i) The Act helps to make the industry more attractive to labour and thereby increases the efficiency in production.
- (j) The Act provides a machinery for quicker disposal of disputes relating to compensation through special tribunals than is possible under the civil law.

The scheme or objective of the Act is not to compensate the workman in lieu of wages but to pay compensation for the injury caused.

Applicability:

The Act applies to any person employed otherwise than in a clerical capacity in railways, factories, mines, plantations, mechanically propelled vehicles, loading and unloading work on a ship, construction, electricity generation etc., and other hazardous occupations and employment specified in schedule II of the Act. The state governments are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving three months notice in the official gazette.

The Act do not apply to armed forces, and employees covered under ESI Act 1948, as disablement and dependents' benefit is available under this Act.

Who is a “workman” under the Act: Section 2(1)(n):

Firstly, a person should be employed

Secondly, his employment should not be of a casual nature.

Thirdly, he should be employed for the purposes of the employer’s trade or business; and

Lastly, the capacity in which he works should be one set out in the list in schedule II of the Act.

10.3 PAYMENT OF COMPENSATION

In schedule I to the Act, the percentage of loss of earning capacity or disablement caused by different types of injuries have been listed.

When employer need not pay compensation:

The employer will not be liable to pay compensation for any kind of disablement (except death) which does not continue for more than three days, if the injury is caused when the workman was under the influence of drink or drugs or willfully disobeyed a clear order or violated a rule expressly framed for the purpose of securing the safety of workmen or willfully removed or disregarded a safety device.

A workman is also not entitled for compensation, if he does not present himself for medical examination when required or if he fails to take proper medical treatment which aggravates injury or disease.

In case of an injury is not fatal, it may result in:

1. Permanent total disablement
2. Permanent partial disablement and
3. Temporary disablement

Disablement means loss of capacity to work or move. Such in capacity may be partial or total.

Total disablement:

Section 2(1): Total disablement is one whether temporary or permanent which incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement and the loss of earning capacity therefore one hundred per cent.

Temporary partial disablement:

This reduces the earning capacity of the workman in any employment in which he was engaged at the time of accident.

Accident:

It is defined as "an unlooked mishap or untoward event which is not expected or designed". Hence a self inflicted injury which is a deliberate act is not considered as an accident.

Permanent partial disablement:

It means which reduces the earning capacity of the workman in any employment he was capable of undertaking at that time.

This type of disablement is decided on the following factors:

1. There should have been an accident
2. The workman has suffered injured as a result of accident
3. The injury has resulted in permanent disablement
4. The earning capacity of the worker therefore got affected.

The compensation payable depends upon the degree of disablement. The Act identified 54 varieties of injuries which result in the loss of the earning capacity.

The injury must arise out of and in the course of employment. Compensation is payable only if the accident occurs during the course of employment.

When employment commences and when employment ceases and what are the exceptions:

Employment commences when the employ reaches his place of work and ceases when he leaves the place of work.

Exceptions:

1. When the wormkan uses the transport provided by his employer for the purposes of going to and from the place of his work the time during which he uses the transport is included in the course of employment.

10.4 OCCUPATIONAL DISEASES

Occupational disease is one which comes during the course of employment. For Ex.: Cement workers are bound to suffer from dust allergies. Telegraphic operators are liable to suffer out of telegraphists cramp.

The Act provides payment of compensation in terms of percentage of monthly wages, linked to the age of the worker at the time of disablement or death. The revised compensation rates are based on those specified in ILO conventions concerning minimum standard of social security. The revised rate of compensation in case of death will now be an amount equal to 40 percent of the monthly wages of the diseased workman multiplied by the relevant factor or an amount of Rs.20,000/- whichever is more.

Where permanent total disablement results from the injury, the compensation will be an amount equal to 50% of the monthly wages of the injured workmen multiplied by the relevant factor or an amount of Rs.24,000 whichever is more. Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the above purposes will be deemed to be one thousand rupees only. The percentage of loss of earning capacity depends on the loss of limbs and varies from 1 per cent to 90 per cent

In case of temporary disablement of half monthly payment of the sum equivalent to 25 percent of monthly wages of the work man has to be paid. Half monthly payment as compensation will be payable on the 16th day from the date of disablement. In cases where the disablement is 28 days or more compensation is payable from the date of disablement. In other cases, the same is payable after the expiry of a waiting period of 3 days. Thereafter, the compensation will be payable half monthly during the disablement or during a period of 5 years whichever period is shorter. There is also a provision for commutation of half monthly payments to a lumpsum amount by agreement between the parties or by an application by either party to the commissioner if the payments continue for not less than six months.

Compensation under the Act (Minimum) (A broad picture)

Death	Rs.20,000
Permanent disability compensation	Rs.24,000
Permanent disability at the age of 20 years	Rs.1,12,000
Permanent disability at the age of 40 years	Rs.93,000
Permanent disability at the age of 55 years	Rs.68,000
For dependents minimum	Rs.30,000
At the age of 20	Rs.90,000
At the age of 40	Rs.74,000
At the age of 55	Rs.54,000

Compensation is payable to the dependents of the workman. For this purpose dependents are:
First group 1 those who are considered dependents without any proof.

Second group – those who must prove that they are dependents.

The first group includes a widow, a minor legitimate son, an unmarried daughter or widowed mother.

Second Group: The following are included in the second group if they are wholly or partially dependent on the earnings of the workers at the time of his or her death – a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter or if widowed and a married brother or unmarried sister or widowed sister if a minor, a widowed daughter in law etc.

The many drawbacks are there: For eg. Minors cannot marry under the law. However, the amount of compensation will be decided by commissioner.

10.5 POWERS OF COMMISSIONERS

If an employer is in default in paying the compensation within one month from the date it fell due, the commissioner may direct for recovery of not only the amount of arrears but also a simple interest at the rate of 6% per annum on the amount due. In the opinion of the commissioner, if there is no justification for the delay, an additional sum not exceeding 50% of such amount may be recovered from the employer by way of penalty.

In the case of occupational diseases, the compensation will be payable only if the workman has been in service of the employer for more than six months. Some of the occupational diseases included in schedule III of the Act are:

- 1) Anthrax
- 2) Poisoning by lead
- 3) Telegraphists cramp
- 4) Silicosis
- 5) Asbestosis
- 6) Bagassosis etc.

On the part of the workers, compensation has to be claimed within a period of 2 years of the occurrence of accident or death.

This Act is administered by the State Governments. The functions of commissioner (State appoints commissioners) are:

- a) Settlement of disputed claims;
- b) Disposal of cases of injuries involving death
- c) Revision of periodical claims
- d) Can impose penalty on the employer who fail to pay compensation.

Employers are required to notify the appropriate authorities the number of accidents, amount of compensation paid etc.

10.6 CONTROVERSIAL ISSUES

- 1) Doctrine of National Extension – i.e., When he is working and when he is not.
- 2) Doctrine of Added penil – i.e. whether he is doing his masters work by duty or voluntarily.
- 3) Doctrine of contributory negligence – i.e. to agree that the accident was due to negligence of employee only.

Each of these doctrines are being settled by different courts.

1) Doctrine of National Extension: Supreme Court: The supreme court explained the doctrine of Notional Extension of employment as "As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded.

It is now well settled, however, that this is a subject to the theory of Notional Extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work.

There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully to determine whether the accident arose out of and in the course of employment of a workman, keeping in view at all times this theory of National Extension (Saurashtra salt Mft. co. V.B.V. Raja and others AIR 1958 Sc. 881).

The question when does an employment begin and when does it cease, depends upon the facts of each case. But the courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working.

There is a national extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employer begins to work or leaves his tools but also when he used the means of ingress and egress to end and from the place of employment.

Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshops, factories or harbours, equally applies to such a bus service. (BEST), the doctrine necessarily will have to be adopted to meet its peculiar requirements. While in a case of factory, the premises of the employer which gives ingress or egress to the factory is a limited one, in the case of a city transport service, by analogy, the entire and fleet of buses forming the service would be the "premises".

A driver, is given the facility in his capacity as a driver to travel in any bus belonging to the undertaking in the interest of service. Hence, a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment. (B.E.S.T. undertaking) Bombay, (vs) Agnes: 1963 11 LLJ 615 S.C.

Doctrine of Added peril:

The doctrine of added peril has been dealt with in the case of Bhrurangya coal co., Ltd. V. Sahabjan Mian and another (1957 II LLJ 522). In this case the principle of added peril was analysed by the Patna high court as under:

“The principle of added peril contemplates that if a workman while doing his masters work undertakes to do something which he is not ordinarily called upon to do and which involves extra danger, he cannot hold his master liable for the risks arising there form.

This doctrine, therefore, comes in to play only when the workman is at the time of meeting the accident performing his duty.

The expressed “added peril” means a peril voluntarily superinduced on what “arose out of his employment to which the workman was neither required nor had authority to expose himself. This is a pithy formula which can always be employed as the crucial test in the facts of a case which are in the debatable region when a workman meets with an accident while he is apparently performing his duties as a workman and which may yet not be incidental thereto, in which case the accident cannot be regarded as having occurred in course of the employment so as to entitle the workman to any compensation.

Doctrine of Contributory Negligence:

Under the doctrine of contributory negligence, the employer may raise the defence that the accident occurs purely due to employees’ negligence on his own part. Such a defense has been given no footing. The main purposes being to safeguard the workers and not to deprive them of their rightful claim under the Act as otherwise every employer would escape the claims by raising the defense of contributory negligence.

In *Sundaresa Mudaliar V Muthammel* (1956 – II LLJ52) the Madras High court held that the doctrine of contributory negligence has no place under the Act, because first of all mere negligence or carelessness would not be regarded as a willful disobedience and second, the doctrine of contributory negligence as a good defence in common law has been abrogated in so far as the workmen’s compensation Act is concerned.

The reasons are said to be twofold: viz., (1) that compensation is not a remedy for negligence of the employer but it is rather in the nature of an insurance of the workman against certain risks of accident; and (2) that this was made an excuse for avoiding all liability, because most negligence are practically accidents in the nature of what is called the act of God. Men who are employed to work in factories and elsewhere are human beings, not machines. They are subject to human imperfections.

10.7 SUMMARY

As technology improves injuries should be reduced, but in a country like India, even then compensation is a must. Accidents are accidents and it is human beings who face accidents. In India some how employer had kept profit as motive and not labour welfare. As such in this background workmen’s compensation. Act is absolutely necessary. Of course the need for this legislation was felt more in 1920’s when no other act was the to give protection or relief to the workers. for example ESI Act 1948.

Another important object was to reduce litigations on small things, but protecting the human being. Since the Act provides enormous powers to the state governments to extend the benefit to any type of employees whose occupations are considered as hazardous or dangers this legislation has enormous scope in nature. The Act is very clear when employment commences and when it ends, horses one or two exceptions have been made. The Act is very clear about disablement and provisions. Extensive powers have been given to the implementing authorities. Controversial issues have been divided by courts of law.

10.8 TECHNICAL QUESTIONS AND LEARNING ACTIVITIES

- 1) What defences are available to an employer against a claim under the workmen compensation Act?
- 2) How far is an employer liable for compensation to a workman injured by an accident arising out of and in course of employment.
- 3) Do you feel amendments are necessary to this Act. If so identify the areas.

10.9 BOOKS FOR REFERENCE

- 1) Workmen's Compensation Act 1923
- 2) Mercantile Law and Industrial Law - B.K. Hussain
- 3) Aspects of Labour Law and Social Security → AM Sarma
- 4) Elements of Industrial Law – N.D. Kapoor
- 5) Labour Law – Reshma Arora.

UNIT 11 : EMPLOYEES STATE INSURANCE ACT - 1948

Structure

- 11.0 Objectives
- 11.1 Introduction
- 11.2 Salient features of the Act
- 11.3 Applicability
- 11.4 Administration
- 11.5 Contribution
- 11.6 Benefits
- 11.7 Summary
- 11.8 Terminal Questions and Learning Activities
- 11.9 Books for Reference

11.0 OBJECTIVES

After studying this unit you will be able to

- Explain the salient features of ESI Act
 - Give the applicability of ESI Act
-

11.1 INTRODUCTION

As we have understood Worker's Compensation Act in the previous unit, now we shall discuss the ESI Act.

11.2 ESG ACT - 1948

Based on the influence of ILO, governments thought over seriously and wished to set up a scheme which will give social insurance. In 1931, the Royal Commission on labour stressed the need for health insurance for workers in India. Prof. Adarkar Committee discussed this issue seriously in 1943 and suggested a legislation called "work men's State Insurance Bill - 1946. This proposal was accepted by a select committee in 1947 and then a law passed in 1948 known as "The Employee's State Insurance Act. (19th April).

Salient Features of the Act:

1. The upper wage limit for coverage of an employee has been raised from Rs.1000 to 1600 per month. (There is a view to increase the same to Rs.3000).
2. If the average wage is less than Rs.6/- No employee's contribution should be recovered.
3. The employee's contribution will be 2.25% of the wages while the employer's contribution will be 5% of the wages in respect of every wage paid.
4. The unit of contribution both in respect of employer's as well as employee's contribution shall be the wage period. (for which wages are ordinarily payable).
5. The eligibility for sickness and Maternity benefit will be that the contribution in respect of an insured person should have been paid / payable for not less than half the number of days of the corresponding contribution period.
6. Only seven standard benefit rates are fixed.

Over a period of time the law has been amended and brought new changes. The following are the important changes.

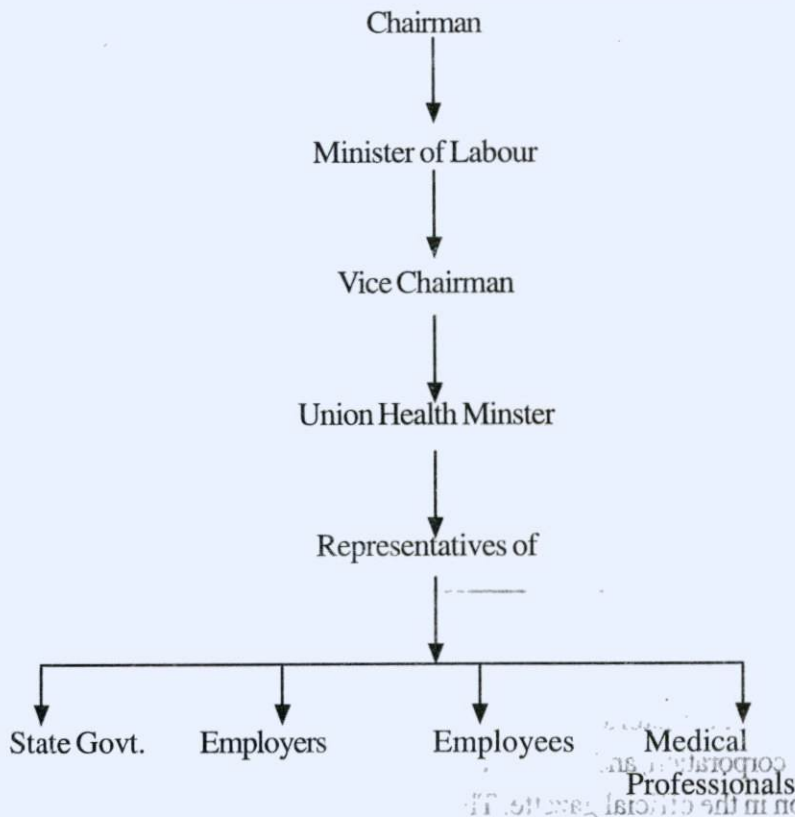
- (a) The system of weekly contributions has been abolished and in its place, the contributions will be payable for every wage period.
- (b) Employee's contribution has to be calculated individually for each employee at 2.25 percent of the wages paid / payable for every wage period. But in the case of employer's contribution, the same may be calculated at the rate of 5% of the total wages paid to all the employees covered under ESI Act in cash wage period, rounded to the next higher multiple of five paise.
- (c) Employees whose average daily wage is below Rs.6 are exempted from payment of employee's contribution. Only employer's contribution will be payable at 5% in respect of such employees.

According to the new provision the contribution in respect of all wages period which end in a calendar month are to be deposited to the ESI Fund Act No.1 in the authorized bank, by 21st of the following month. An employee on remaining in employment for 3 months will be provided a permanent identity card.

11.3 APPLICABILITY

The Act applies to all factories using power and employing. 20 employees. The Act even applies to shops, hotels and restaurants. However, the Act does not apply to a mine or railway running shed, and specified seasonal factories. The state governments can extend the Act to any institution, in consultation with the corporation, and with the approval of the central government, after giving 6 months notice of its intension in the official gazette. The Act defines employee as "any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies. The Act does not make any distinction between casual or temporary or between technical and non-technical employees. It also covers administrative staff and persons engaged in connection with the purchase of raw materials or the distribution or sale of products and related functions.

11.4 ADMINISTRATION



They have to be nominated by central government. The affairs of the corporation are directly administered by a standing committee from amongst its members. There is a medical benefit council to advise the corporation on matters related with the provision of Medical Cases. Every insured person will have an identification card and this should be produced of the time of claiming Medical Benefits.

Standing Committee:

The Director General of the Corporation shall be ex - officio member of the corporation and he is incharge of all matters with central and state government.

11.5 CONTRIBUTION

The employer who fails to pay contribution within the period stipulated shall be liable to pay interest at the rate of six per cent per annum in respect of each day of default or delay in payment of contribution, and also may be liable for damages for late payment under section 85(b) of the Act. The employer must maintain the following Registers.

- a) Register of Employees
- b) Accident book in which every accident occurring to employees during the course of employment and inspection book.

11.6 BENEFITS

ESI BENEFITS AT A GLANCE

Benefit	Contributory conditions	Duration	Rate
1	2	3	4
1. Sickness benefit	Payment of contribution for not less than half the number of days in the relevant contribution period	91 days in any two consecutive benefit periods	As per standard Benefit Rate
2. Sickness benefit for 22 specified long term diseases like T.B., Leprosy etc.	Continuous employment for a period of two years	124 days which may be extended upto 309 days in specified chronic cases during a period of 3 years	25% above the standard benefit rate.
3. Standard sickness benefit for undergoing sterilization operation for family welfare planning	Same as for sickness benefit at (a) above	7 days for vasectomy and 14 days for tubectomy ting extendable in cases of post operation complications etc.	Twice the standards of benefit rate
4. Disablement benefit (employment injury)	No condition	In case of temporary disablement, as long as capacity lasts and in case of permanent disablement for life.	Temporary disablement 40% more than the standard benefit rate. Permanent disablement benefit as prescribed by medical board.

5. Dependents Benefit (Employment injury)	No condition	For widow's for life or until remarriage, to legitimate children up to 18 years.	As in the case of temporary disablement benefit rate
6. Maternity benefit	Same as sickness benefit	12 weeks of which not more than six weeks can precede the expected date of confinement 6 weeks miscarriage. Additional one month for sickness arising out of pregnancy, confinement, premature birth of child or miscarriage.	Twice the standard benefit rate.
7. Medical benefit (for insured person and his family)	No condition	From the date of insured person into insurable employment so long as he remains in insurable employment and thereafter for certain additional period	Full medical case
8. Funeral benefit	Insured person		Actual expenses but not exceeding Rs.500/-.

All the above benefits are paid in cash except medical which is given in kind.

However, double benefit cannot be enjoyed; i.e. when a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit under any other Act. Further an insured person will not be entitled to receive the benefit for the same period - i.e. both sickness benefit and maternity benefit, again, both sickness benefit and disablement benefit for temporary disablement, again, both maternity benefit and disablement benefit for temporary disablement, when a person is entitled to more than one of the benefits, he has an option to select any one of them. If a dispute arise then it has to be decided by the employees insurance court and not by civil court.

11.7 SUMMARY

ESI Act provides cash benefit as well as medical benefit which may be in kind. Substantial relaxation has been made since 1948, to include as many workers as possible. The Act is also flexible since it is applicable to all kinds of factories as well as shop, hotels and restaurants. The Administrative set up is good and all disputes will be settled through insurance court and not by civil court. Looking at the benefits of the Act, needless to say the importance of this law in furthering the welfare of the labour class. Only factor is two benefits cannot be enjoyed by any labour.

11.8 TERMINAL QUESTIONS AND LEARNING ACTIVITIES

1. What are the different kinds of benefits to which injured person is entitled under the ESI Act 1948.
 2. Who are entitled to get dependents benefit in case of death arising out of employment injury.
 3. Can an insured woman be entitled to sickness benefit and maternity benefit together for the same period.
 4. Discuss the benefits available to an employee in case of sickness or disablement under ESI Act 1948.
-

11.9 BOOKS FOR REFERENCE

- 1) N.D. Kapoor - Elements of Industrial Law.
- 2) Kapoor and Tripathi, - Industrial Law and Practice
- 3) A.M. Sarma - Aspects of Labour Welfare and Social Security.
- 4) Sonaikar S.S. - Information of Labour Enact Member.
- 5) Five year plan documents.
- 6) Vidyanatha - ILO Connections and India.
- 7) Dr. Bisunnath Ghosh - Labour Law.

UNIT 12 : EMPLOYEES PROVIDENT FUND ACT 1952

Structure

- 12.0 Introduction
- 12.1 Applicability
- 12.2 Nomination
- 12.3 Modus Operandi
- 12.4 Appellate Tribunal
- 12.5 Summary
- 12.6 Technical Questions and Learning Activities
- 12.7 Books for references

12.0 OBJECTIVES

After studying this unit you will be able to

- Explain the applicability of PF Act 1952
 - Give the Modus Operandi of ESI Act.
-

12.1 INTRODUCTION

As we have discussed the ES Act in the previous unit now we shall try to discuss various aspects of EPF Act – 1952.

12.2 EMPLOYEES PROVIDENT FUND ACT – 1952

The Government of India, took a decision to issue an ordinance on 15th November 1951, after having had a lot of deliberation and discussion with labour called “Employees Provident Fund Ordinance”. On 4th March 1952 it has replaced by an Act in 1952. This Act came in to force on 1st November 1952.

Benefit:

The Act was passed for the benefit of employees in factories and other establishments. However, the major intention was to provide a provision for the future of the industrial workers after their retirement or for their dependents. Therefore the major objective of the Act was to provide substantial security and timely monetary assistance to industrial employees and their families when they are in distress and / or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and even in some other contingencies.

The Government of India made a review from 1952 to 1990 and found adequate long term benefit has not been given to labour. Hence in 1971 Employees Family Pension scheme was introduced. The Act was amended in 1976 and included Employees Deposit Linked Insurance Scheme. Therefore this Act is now called “Employees Provident Funds and (Miscellaneous Provisions) Act 1952.

In this guidelines we are confining one to Provident Fund Act 1952.

12.3 APPLICABILITY OF THE ACT

This Act applies to all classes of establishments which have completed three years of their existence and employing 20 or more persons. The central government is authorized to apply the provisions of this Act to any establishment employing even less than 20 persons. However, in such cases the government has to give at least two months notice of its intention to do so by a notification in the official gazette.

The other condition is that once the Act is applied based on the number 20, are cannot repeal the law even if number of employees reduce less than 20.

Employees drawing a pay not exceeding Rs.3,500/- per month are eligible for membership of the fund.

Rate of Contradiction:

The normal rate of contribution to the provident fund by the employees and the employers is $8\frac{1}{3}\%$ of the pay of the employees.

Wages:

The term "Wages" includes basic wage, dearness allowance, including cash value of food concession and retaining allowance, if any.

Power to the Central Government:

The Act provides powers to the central government to enhance the statutory rate of contribution to 10% of wages in any industry or class of establishments.

Where to invest:

The provident Fund accumulations are to be invested in Government securities, Negotiable securities, Bonds, 7 year National Savings Certificates, Post Office Time Deposits and Special Deposit Schemes that may come into force.

Withdrawal:

Under the scheme, a member may withdraw the full amount standing his credit in the Fund in the event of:

- a) Retirement from service;
- b) Retirement on Account of Permanent and Total incapacity.
- c) Migration from India for permanent settlement abroad, and
- d) Termination of service in the court of mass retrenchment (involving 3 or more people)

12.4 NOMINATION

The nomination form shall be filled in duplicate and one copy duly accepted by the provident fund office will be kept by members. In case of change, a separate form for a fresh nomination should be filled in duplicate.

If there is no nominee the amount shall be paid to the members of his family in equal shares except: -

- 1) Sons who have attained majority;
- 2) Sons of deceased son who have attained majority
- 3) Married daughters whose husbands are alive
- 4) Married daughters of deceased son whose husbands are alive

12.5 MODUS OPERANDI

As soon as possible after the completion of each accounting year, every member of the fund shall be supplied with an account slip showing.

- 1) The opening balance;
- 2) The amount contributed during the year
- 3) The amount of interest credited or debited during the year and
- 4) Closing Balance - Errors if any should be brought to the notice of the commissioner within six months.

Exemption under Section 16 (2):

The central government is empowered to grant exemption to any class of establishment from the operation of the Act for a specified period on financial or other grants under section 16(2).

The exempted establishment are required to constitute a Board of Trustees according to rules governing the exemption to administer the funds, subject to overall control of the Regional Provident Fund Commissioners.

12.6 APPELLATE TRIBUNAL

The central government can constitute one or more appellate tribunals to exercise powers and to discharge functions.

The central government will appoint one person for the tribunal. This person should have the following qualification i.e., He should be a judge of a High court or District judge.

12.7 SUMMARY

The objective of the Act is to bring some kind of social security even after retirement. In other words it intends to provide a security to the employees at old age, disablement etc. After a review, it remodeled the Act as Employees provident fund and (Miscellaneous Provisions) Act 1952. It now provides three benefits to the labour.

The central government has the power either to extend or delete or to exempt any kind of establishment through a gazette notification. The normal rate of contribution is 8 1/3% though it can be raised to 10% Nomination facility has been provided so that a family member may benefit. In addition a card will be issued and this will ensure the employee to know the amount that is in his balance. Administrative machinery has been set up called Appellate tribunal and normally a person having a status of a High Court will chair such Tribunals

12.8 TECHNICAL QUESTIONS AND LEARNING ACTIVITIES

1. What establishments may be exempted from the operation of EPF scheme Act 1952.
2. What are the important provisions of EPF Act 1952.
3. Write Short Notes on:
 - (a) Employees Provident Fund Appellate Tribunal
 - (b) Employees Deposit Linked Insurance and Fund
4. Give a brief note of EPF Act 1952.

12.9 BOOKS FOR REFERENCES

- (1) N.D. Kapoor - Elements of Industrial Law;
- (2) Morthy. M. - Principles of Labour Welfare.
- (3) Sonarika.S.S. - Implementation of Labour Enactments.
- (4) Indian Law Books
- (5) Dr. Biswanath Ghosh - Labour Law
- (6) EPF Bare Act 1952.

UNIT 13 : PAYMENT OF GRATUITY ACT 1972

Structure

- 13.0 Objectives
- 13.1 Introduction
- 13.2 Payment of Gratuity Act 1972
- 13.3 Objectives of Payment of Gratuity
- 13.4 Payment of Gratuity
- 13.5 Forfeiting
- 13.6 Nomination
- 13.7 Determination the amount of Gratuity
- 13.8 Summary
- 13.9 Technical Questions and Learning Activities
- 13.10 Books for References

13.0 OBJECTIVES

After studying this unit you will be able to;

- Explain the provisions of payment of Gratuity Account
 - State the objectives of payment of Gratuity Account
 - Give the provisions regarding determination of gratuity.
-

13.1 INTRODUCTION

As we have discussed Workmen's Compensation Account, ESI, EPF Account in the previous units now we shall try to discuss various aspects and payment of Gratuity Act – 1972.

13.2 PAYMENT OF GRATUITY ACT 1972

Gratuity is nothing but an additional benefit that an employee gets for his best service to the organization.

The term "Gratuity" refers to additional retirement benefit to be secured to labour for the contribution of their services towards the organization employed in".

Gratuity was considered as a provision for old age and a reward for good efficient and faithful service. For a longtime gratuity was a payment by an employer to his employees at his will and pleasure in reciprocation for efforts contributed towards the industry.

In course of time, due to bilateral and adjudication process, gratuity came to paid compulsorily to employees engaged in factories, mines, oil fields, plantations, posts, railway companies, motor transport undertakings, shops and other establishments.

The Act is also a measure towards social security and thus helps the worker at their old age.

After passing this Act, gratuity has become a legal right of workers instead of an ex-gratia payment.

13.3 OBJECTIVES

- (1) It is a measure of social security providing to the workers in their old age;
- (2) It is a reward for hard work;
- (3) It is an incentive to workers to work hard;
- (4) The Act ensures an Uniform gratuity to employees throughout the country;

Applicability and why this Law:

This Act applies to every factory, mine, oil fields, plantation, post and Railways. This applies to any shop or establishment where 100 or more persons are employed on any day of the preceding twelve months. In this Act "Factory" has the meaning assigned to it in clause (m) of section 2 of the factories Act.

This Law is necessary to ensure a uniform pattern of payment of gratuity to the employees throughout the country. It avoids different treatment to the employees of establishment having branches in more than one state.

13.4 PAYMENT OF GRATUITY

Section 4 confers a right on the employees to receive gratuity. It is payable to an employee on the termination of his employment after he has rendered continuous services for not less than 5 years on his superannuation; or on his retirement or resignation or on his death or disablement due to accident or disease.

However, this will be released (i.e., 5 years) if the termination of any employee is due to death or disablement.

The nominee or the guardian of such nominee is eligible for gratuity in case of employee's death.

In the case of monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by 26 and multiplying the quotient by 15. The amount of gratuity payable to an employee shall not exceed one lakh of rupees.

If the person is employed after his disablement on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced. The right of employees to receive better terms of gratuity under any award or agreement or contract with the employer is not taken away by this Act.

13.5 FORFEITING

The gratuity can be forfeited if:

- 1) The services of an employee has been terminated for any act of willful omission.
- 2) The services of on employee has been terminated for any negligence.
- 3) The services of an employee has been terminated for causing any damage or loss or destruction of property belonging to the employer.

The gratuity can be forfeited to the extent of damage or loss caused to the employer.

The gratuity payable to an employee may be wholly or partially forfeited.

- 1) If the services of such employees have been terminated for his riotous or disorderly conduct or any other act of violence on his part.
- 2) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Exemption:

The Act provides for the grant of exemption from the operation of the Act to any person or class of persons if they are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.

13.6 NOMINATION SECTION 6

An employee who has completed one year of service has to nominate a person in the presented form. An employee in his nomination can distribute the amount of gratuity amongst more than one nominee.

If an employee has a family at the time of making a nomination, then it should be one of the family members only. Any nomination who is not a member of his family shall be void.

If an employee has no family at the time of making a nomination, then he can make the nomination in favour of any person, but if such employee acquires a family subsequently then such nomination becomes invalid.

Nomination once made can be modified after giving due notice to the employer. If a nominee predeceases the employee, a fresh nomination is required to be made.

13.7 DETERMINATION OF THE AMOUNT OF GRATUITY: SECTION - 7

Any person who is eligible for payment of gratuity under the Act or any person authorized must give in writing to the employer within a stipulated period for the payment of gratuity.

Even if the time period is over, the employer has to consider the issue and determine the amount of gratuity and give in writing the amount to be payable.

The employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable.

Disputes:

The employee and the employer or any other person raising the dispute regarding the amount of gratuity may make an application to the controlling authority to decide the dispute.

No appeal by an employer shall be admitted unless the employer produces a certificate of the controlling authority to the effect that he has deposited with the controlling authority an amount equal to the amount of gratuity required to be deposited or deposits with the appellate authority such amount.

Section - 8:

This section provides an opportunity to the aggrieved employer to file an application to the controlling authority for the recovery of the amount of gratuity. The controlling authority will issue a certificate to the collector for recovery of that amount. The collector has to collect the amount together with interest at the rate of 9% per annum from the date of expiry of the prescribed time as arrears of land revenue, and pay the same to the person entitled to it.

Section 9:

This section provides penalties. This section also provides a provision to declare certain acts as offence. For Ex. To avoid payment if any person makes a false statement or false representation, he shall be punishable with imprisonment up to 6 months and / or fine up to Rs.1000/-

Section 10:

This section exempts the employer from liability in certain cases.

For Eg. If an employer is charged with an offence punishable under the Act, then he is entitled to lodge a complaint before the court against any person whom he feels the real offender.

In such a case, the employer has to give to the complainant not less than three days notice in writing of his intention to file a complaint.

Section 11:

No complaint will be entertained under the Act unless a complaint is made by or under the authority of the appropriate government.

Section 12:

This section protects the controlling authority if he has done anything in good faith.

Section 13:

This section protects the gratuity from being attached in execution of any decree or order of any civil, revenue or criminal court.

Section 15:

This section empowered the appropriate government to make rules for the purpose of carrying out the provisions of this Act.

Further, the appropriate government can appoint inspectors with various powers to inspect documents and ensure payment of gratuity to the employees as prescribed under the Act.

13.8 SUMMARY

Gratuity is a reward for honest and hard work. It is a reward for efficient and faithfully service. Today this Act is extended to all most all establishments. The object is providing social security at old age without any basic discrimination among employees. All those employees who are getting less than Rs.2,500/- is an employee for the purposes of this Act. It is payable to an employee if he has served at least 5 continuous years. The Act provides nomination facilities. In general 15 days wages shall be calculated for the purpose of gratuity. The gratuity can be forfeited under certain circumstances. Nomination should be made only among family members. Disputes if any will be settled by the controlling authority. Any false information with regard to gratuity amounts to imprisonment up to 6 months and a fine upto Rs.1,000/- No gratuity can be attached under law.

13.9 TECHNICAL QUESTIONS AND LEARNING ACTIVITIES

1. What are the rules regarding the nomination by an employer under the payment of gratuity Act 1972.
2. When does an employer forfeit his right to gratuity.
3. Who is the controlling authority under the Act? What are his powers?
4. What is the rate of gratuity payable to an employee under the payment of gratuity Act 1972. What is the maximum gratuity payable under the Act. when does an employer forfeit it payable under the Act.

13.10 BOOKS FOR REFERENCES

1. Gratuity Act - 1972.
2. N.D.Kapoor - Elements of Industrial Law.
3. Various Labour Journals.

UNIT 14 : MATERNITY BENEFIT ACT-1961

Structure

14.0	Objectives	1
14.1	Introduction	1
14.2	The Act and its Applicability	1
14.3	Salient features of the Act	1
14.4	Depriving of Maternity Benefit	1
14.5	Summary	1
14.6	Technical Questions and Learning Activities	1
14.7	Books for References	1

ANSWER QUESTIONS AND EXERCISES

1.1	What is the purpose of the Maternity Benefit Act, 1961?	1
1.2	What are the salient features of the Maternity Benefit Act, 1961?	1
1.3	What is the scope of the Maternity Benefit Act, 1961?	1
1.4	What are the conditions for availing maternity benefit?	1
1.5	What is the duration of maternity benefit?	1
1.6	What is the rate of maternity benefit?	1
1.7	What are the conditions for availing maternity benefit?	1
1.8	What is the duration of maternity benefit?	1
1.9	What is the rate of maternity benefit?	1
1.10	What are the conditions for availing maternity benefit?	1
1.11	What is the duration of maternity benefit?	1
1.12	What is the rate of maternity benefit?	1
1.13	What are the conditions for availing maternity benefit?	1
1.14	What is the duration of maternity benefit?	1
1.15	What is the rate of maternity benefit?	1
1.16	What are the conditions for availing maternity benefit?	1
1.17	What is the duration of maternity benefit?	1
1.18	What is the rate of maternity benefit?	1
1.19	What are the conditions for availing maternity benefit?	1
1.20	What is the duration of maternity benefit?	1
1.21	What is the rate of maternity benefit?	1
1.22	What are the conditions for availing maternity benefit?	1
1.23	What is the duration of maternity benefit?	1
1.24	What is the rate of maternity benefit?	1
1.25	What are the conditions for availing maternity benefit?	1
1.26	What is the duration of maternity benefit?	1
1.27	What is the rate of maternity benefit?	1
1.28	What are the conditions for availing maternity benefit?	1
1.29	What is the duration of maternity benefit?	1
1.30	What is the rate of maternity benefit?	1

14.0 OBJECTIVES

After studying this unit you will be able to,

- Explain the applicability of MB Act 1961
- Describe the salient features of Maternity Benefit Account.

14.1 INTRODUCTION

One of the important conventions that were adopted by ILO in 1919 was "Protection of Motherhood". In 1924 a private bill was introduced in parliament which made it mandatory for all the employers to provide maternity benefit to women workers. But unfortunately the will was rejected saying it will have more adverse effects on the employment of women than helping them in employment. Probably this view was there in 1920, as most of the labour legislations were pro- employers.

But the Royal commission felt that this scheme should be introduced at least for women who are permanently employed in non-seasonal factories. Later on this scheme was accepted in general. With the result in the year 1926 Government of Bombay passed the Maternity Benefit Act. Later on it was passed in states like Madras, U.P. and Bengal. However, one should note that there were lot many differences among states with regard to leave, the quantum of benefit and the qualifying conditions. After looking into the various disparities, the central Government passed the Maternity Benefit Act in 1961.

14.2 THE ACT AND ITS APPLICABILITY

This Act applies to every establishment, factory, mine or plantation. This act came into force in mines on 1st November 1963 after replacing the original mines maternity Benefit Act, 1941.

Under the Act, the State Government have been given powers to extend this law to any establishment or class of establishments, industrial, commercial and even to agriculture. However any extension should have the approval of the central government.

It should also be observed that this act is not applicable to places where ESI Act is applicable. This Act is also a social piece of legislation to promote the welfare of working women. This Act prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits for women workers during the period when they are out of employment on account of their pregnancy.

This Act is very serious about the factor, i.e., the services of a woman worker cannot be terminated during the period of her absence on account of pregnancy. However, a woman may be terminated for gross misconduct.

14.3 SALIENT FEATURES OF THE ACT

1. The maximum period for which a woman can get maternity benefit is 12 weeks. Of this six weeks must be taken prior to the date of delivery of the child and six weeks immediately following that date.
2. To get maternity leave, a woman must have actually worked for not less than 80 days in the 12 months immediately preceding the day of her expected delivery.
3. Only working days are taken into account when calculating these 80 days. However, if a woman is laid off from work, such periods will be deemed as working days.
4. To avoid six weeks before delivery a notice must be given in writing stating the date of absence from work and also a certificate of pregnancy.
5. For the six week's leave from the date of delivery, another notice must be sent together with a certificate of delivery after the child is born.

The failure to give such notice for the subsequent six weeks does not, however, disentitle a woman from maternity benefit.

6. Every woman entitled to maternity benefit is also entitled to a medical bonus of Rs.250/- if no pre-natal confinement and post natal care has been provided for by the employer free of charge.
7. In case of miscarriage a woman is entitled to six weeks leave with pay from the day of miscarriage, In this case also, she must give notice together with the certificate of miscarriage.
8. For illness arising out of pregnancy, delivery, premature birth or miscarriage, a woman employee can take extra leave up to a maximum period of one month. This leave can be taken at any time during pregnancy or can be attached to the six weeks prior to or after delivery or miscarriage.
9. A woman employee resuming duties after delivery is to be given two nursing breaks of prescribed duration in addition to her regular rest intervals for nursing the child until her child attains the age of 15 months.

In this connection it should be observed that each state has its own rules as to the length of the break. In Maharashtra it is 15 months.

10. An employer cannot reduce the salary on account of light work that may be assigned to her or breaks taken to nurse her child.
11. If a woman entitled to maternity benefit dies before receiving her dues, the employer has to pay the person nominated by her in the notice, or to her legal representative in case there is no nominee.

12. If she dies during the six weeks before delivery, the benefit is payable only for the days up to and including the day of her death.
13. If she dies during delivery or during the following six weeks, leaving behind a child, the employer has to pay maternity benefit for the entire six weeks, but if the child also dies during the period, then for the days up to and including the day of the death of a child.

14.4 DEPRIVING OF MATERNITY BENEFIT

When can maternity benefit be deprived:

A female employee can be deprived of maternity benefit if:

1. After going on Maternity leave, she works in any other establishment during the period she is supposed to be on leave.
2. During the period of her pregnancy, she is dismissed for any prescribed gross misconduct.

Under the Act Misconduct means:

1. Willful destruction of employers goods and / or property.
2. Assaulting any superior or co-employer at the place of work
3. Criminal offence involving moral turpitude resulting in conviction in a court of law.
4. Theft, fraud or dishonesty in connection with the employer's business or property and
5. Willful non-observance of safety measures or rules or willful interference with safety devices or with fire fighting equipment.

However, the Act provides a clause stating that an aggrieved woman has the right the appeal in such cases.

Section 17 says:

A any woman claiming that Maternity Benefit or any other amount to which she is entitled under this act and any person claiming that payment due under this section has been improperly withheld may make a complaint to the inspector. The inspector may make an enquirys and if satisfied may direct the payment to be made according to his orders.

Important words that are available under the Act:

Child - Child includes a still - born child.

Employer: It means in relation to an establishment which is under the control of the government, a person or authority appointed by the government for the supervision and control of employees, or where no person or authority is so appointed, the head of the department.

Establishment: It means a factory, a mine, a plantation, an establishment to which the provisions of this Act have been declared.

Wages: It means all remuneration paid or payable in cash to a woman, if the terms of the contract of the employment, express or implied were fulfilled and includes.

- (a) Such cash allowances (including DA and House rent) as a woman is for the time being entitled.
- (b) Incentive bonus
- (c) The money value of the concessional supply of food grains and other articles.

Miscarriage: It means expulsion of the contents of the pregnant uterus at any period prior to or during the 26th week of pregnancy, but does not include any miscarriage, the causing of which is punishable under the IPC.

14.5 SUMMARY

To protect motherhood, this Act was passed.

This is certainly an important step in the social piece of legislation for woman hood. The act is very clear about the benefits to be given to woman employers. In fact this Act is removing the bias against women employment. State Governments are at liberty to extend this law to any establishments.

At the same time the law made the points very clear when a woman need not or cannot get this benefit. This is only to ensure discipline among woman workers and also to see that they should not try to get the same benefit in two places simultaneously.

14.6 TECHNICAL QUESTIONS AND LEARNING ACTIVITIES

1. Define the terms (1) Employer (2) Miscarriage
2. Can an employer discharge a woman during or an account of absence from work during pregnancy.
3. Can any deductions be made from the normal and usual daily wages of a woman entitled to maternity benefit.
4. What are the maternity benefit available to women under the Act.
5. Powers of the inspectors for the purposes of maternity benefit Act.

14.7 BOOKS FOR REFERENCES

1. Maternity Benefit Act 1961
2. Singh M.M. - Social security and National Development
3. Indian Labour Laws.
4. Vidyathanan - Labour conventions of ILO and India.
5. Dr. Biswanath Ghosh - Labour Law.

BLOCK - V :

UNIT 15 : INDUSTRIAL DISPUTES ACT

Structure

- 15.0 Objectives
- 15.1 Introduction
- 15.2 Historical background
- 15.3 Objectives of the Act
- 15.4 Definitions
- 15.5 Classification of Industrial Disputes
- 15.6 Causes of Industrial Disputes
- 15.7 Strikes and Lockouts
- 15.8 Prohibition of Strikes and lockouts
- 15.9 Lay off and retrenchment
- 15.10 Settlement and prevention
- 15.11 Let us sum up
- 15.12 Terminal Questions
- 15.13 References

15.0 OBJECTIVES

After reading this unit you will be able to understand the legal provisions of ID Act and now Industrial disputes can be prevented or settled.

15.1 INTRODUCTION

Conflicts of interest is as old as human civilization. Development of any society is possible on mutual co-operation of different segments of society. In modern era all problems have turned to be multifaceted and complex. This situation leads to conflicts and disputes. Careful treatment of these problems can lead to some solution. Hence the need for the ID Act.

15.2 HISTORICAL BACKGROUND

In India earliest legislature Bengal Regulation Act VII of 1819. There three enactments came into being namely, merchant shipping Act 1859, workmen's Breach of contract Act 1859, Employee's and workmen's (Dispute) Act 1860 (amended in 1929 and renamed as Trade Disputes Act, 1929) and they empowered the government to appoint a Board of conciliation or court of enquiry with a view to investigate and settle trade disputes. This Act has amended in 1932, 1934 and 1938 in order to make it more accommodative to modern demands.

Due to negative influence of world war II, the government introduced Defence of India Rules 1942, so as to keep production at the highest level and without any interruption. Later on, in 1946 the government of India introduced, the industries Disputes bill in legislative Assembly. On the basis of the re-commendations of select committee, it was passed in march 1947, repealing the Trade Disputes Act 1929, with effect from 1.4.1947

15.3 OBJECTIVES OF ACT

The Supreme Court in Benaras Ice Factory Ltd. Vs. Its' workmen (AIR 1957, SC 167) analysed the following objectives of the Act .

- a) The promotion of measures for security and good relations between employer and workmen.
- b) An investigation and settlement of industrial disputes between employees and employers, employers and workmen or workmen and workmen with a right of representation by a registered trade union or federation of Trade Unions or Association of employers or an Federation of Association of employers.
- c) The prevention of illegal strikes and lockouts
- d) Relief to workmen in the matter of layoff retrenchment, and closure of undertakings.

- e) Collective bargaining. These principles were reiterated by the Supreme Court in Dimakuchi Tea Estate case being a social legislation. The Industrial Disputer Act in progressive in nature aiming at the amilioration of the conditions of workmen in industry.

This Act extends to the whole of India. The preamble of the Act reads that to make provisions for the investigation and settlement of industrial disputes.

Recent Amendments

Several amendments have been made from time to time in the light of new industries policies, judicial interpretations and social movements. Among the amendments. Indus trial (Amendments) Act 1984 are more important. A bill was moved in 1988 namely Trade Unions and Industrial Disputes (Amendments) Bill 1988. However the bill was not passed due to pressure of public opinion being against the amendment.

15.4 DEFINITION OF IMPORTANT TERMS

a) Appropriate government (Sec 2 (a)) :

The central government is vested with various powers and duties. Whether the appropriate government is the central Government or the State Government depends on the subject matter of the dispute. If the industry is carried on by or under the authority of central government or the industry being located in more than one state, the appropriate government is central government. In all other cases, the appropriate government is the State Government within whose territory the industrial dispute arises.

b) Award (Sec 2(b))

Award means an interim or final determination of any industrial dispute or any question relating there to. The determination must be an any labour court, industrial tribunal or National tribunal and includes an arbitration award made under Sec.10 (A)

c) Employer (Sec 2 (g))

Means – in relation to an industry carried on by or under the authority of any department of the central government or a state government., the authority prescribed in this behalf or where no such authority is prescribed the head of the department. In case of local authority, the chief Executive Authority.

d) Industry (Sec.2(i))

Industry means any systematic activity carried on by any co-operation between an employer and his worker. (Whether, such worker are employed by such employer directly or by or through any agency, including contract) for the production, supply or distribution of goods or services with to satisfy human wants, whether or not.

- i) any capital has been invested for the purpose of carrying an such activity; or
- ii) such activity is carried on with a motive to make any gain or profit and includes
 - a) any activity of Dock
 - b) any activity relating to promotion of sales or business or both, but does not include the following:
 - any agricultural operation
 - Educational, Scientific Research and Training institute.
 - Institutions owned by charitable, social or philanthropic service
 - Khadri and village industries
 - Domestic service
 - Professional activities
 - Co-operative Societies.

The Supreme Court of India has laid down the following principle to identify an industry. (Bangalore water supply boards V/s A Rajappa, AIR 1978 SC 548)

There shall be

- a) systematic activity
- b) Employer/Employee relationship
- c) Production/distribution/Services of the Board

However, it shall not include spiritual or religious services, professionals, clubs, cooperative research lab etc.

The ID (Amendment) Act 1982, defines industry in the lines of above case. But the amended definition has not been enforced. Since this case amends precedent, it is binding and became part and parcel of law.

e) Industrial Dispute (Sec.2 (k))

Means, any dispute or difference between employers and employees, or between workmen and workmen or between employers and employees, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person.

The supreme court in workmen of Dimakuchi Tea Estate vs Management of company (1958, SCR 1156) laid down 3 tests to identify an industrial disputes.

- a) There must be a dispute or a difference
- b) Difference must be between employers and employees, or between employers and workmen or between workmen and workmen.
- c) Difference as dispute is in relation with employment or non-employment or conditions of labour of any person.

15.5 CLASSIFICATION OF ID

Generally the following kinds of disputes are found:

- a) Interest of dispute – disputes due to deadlocks in the negotiations for a collective agreement.
- b) Grievance disputes – due to day grievance or complaints
- c) Unfair labour Practices – Those arising from acts of interference with the exercise of the right to organize.
- d) Recognition disputes

Disputes over the right of a trade union to represent a particular category of workers on collective bargaining.

15.6 CAUSES FOR ID

An industrial dispute is multifaceted. Generally the following factors have been considered as causes for a dispute, namely

- a) Industrial factors
- b) Managements attitude to labour
- c) Government
- d) Other Causes

a) Industrial factors

Normally, matters related to employment like wages or dismissal or privileges do operate. Trade unions may take up and fight effectively or not due to their inherent defects.

b) Management Attitude:

Generally managements may ill treat workers. They are not broad minded. They will not talk to workers on matters related to their interest. Partisan approaches not recognizing unions, showing cold response to negotiations, dilatory tactics all operate here.

c) Government Machinery

Inefficient machinery is useless. Though there are number of enactments available, governmental machinery may fail to execute them properly. For example, the governmental machinery has settled a very negligible number of disputes. Sometimes the machinery is alleged to be corrupt. These negative factors investigate a dispute.

d) Other Causes

Political Parties instigate problems, since the trade unions are affiliated and promoted by political parties.

15.7 STRIKES AND LOCKOUT

Strike(Sec(2)) means

- a) Cessation of work by a group of persons employed in any industry acting in combinations or
- b) A concerted refusal of any no. of persons who are or have been employed in any industry to continue to work or to accept employment, or
- c) A refusal under a common understanding of any no. of persons who are or have been employed in industry to continue to work or to accept in industry to work or to accept employment.

Strike is one of oldest and the most effective weapon of labour or right in the armoury of labour. It owes its origin to old English word 'Strican to go'. Anderson's Dictionary of Law defines strike to be a combination among labourers or those employed by others, to compel an increase of wages, a change in hours of work, a change with manner of conducting business to enforce same particular policy in the character or number of men employed etc.

Kinds of Strike

Mainly three kinds of strike are found. They are –

- a) Primary strike
- b) Secondary strike
- c) Other forms of strike.

As noted earlier workers resort to strike as a last resort to compel the employer to fulfill their demands. But mere cessation of work does not amount to strike, unless the stoppage of work were a concerted (comtrined) action for the enforcement of an industrial demand, (Indian Iron and steel co. Ltd Vs its workmen. (1967 MJ 381 capt.)

The employees of standard vacuum oil company, Madras requested to employer to declare a holiday on May day and had submitted that they moved work voluntarily on the following Sunday. The employer turned down the request. Hence the workers applied for Mass leave on May Day. The Supreme Court held in this case (1954, ILJ 1956 LAT) that there was no 'stoppage of work' or concerted refusal to work and the action of the workers to apply for leave did not amount to strike.

It is submitted that industrial peace gets disturbed whenever there is strike justified only when the cause for strike is justified. Industrial disputes can be prevented by effective labour management. A better management shall take all preventive measures to prevent strike.

Lockout Sec 2(1)

'Lockout' means the suspension of the work or the refusal by all employer to continue any number of persons employed by him. It means

- a) Temporarily close down the place of employment,
- b) The element of demand must be present
- c) Intention to re-open the establishment
- d) It must be an industrial establishment.

Lockout is a weapon in the hands of employer. It is used to prevent the workers from damaging the property and forcing them to come back to work. Generally lockout is caused by existence or apprehension of an industrial dispute, and a tactic in bargaining.

15.8 PROHIBITION OF STRIKES AND LOCKOUTS

Sec.2(n) The government can declare a service as 'public utility' in public utility.

Sec 22 prohibits strikes and lockouts of public utilities.

Sec 22 (1) Lays down the conditions under which employees can go on strike in public utilities.

Sec 22 (2) lays down the conditions applicable to employer to go for lockout

Sec 23 prohibits strikes and lockouts during the period of process before conciliation Board, labour court or Tribunal.

15.9 LAY OFF AND RETRENCHMENT

Lay off and retrenchment are used by the employer.

Lay off (Sec.2(kkk)) – means the failure or inability of an employer to give employment to worker whose name is borne on the muster roll of his industrial establishment for the time being on any one of following grounds.

- a) shortage of coal, power, raw material.
- b) Accumulation of stock

- c) Break down of machinery
- d) Natural calamity
- e) Any other reason, justified

The workman in question must not have been retrenched.

Retrenchment Sec 2 (00)

Means termination by the employer of the services of a workman or for any reason whatsoever, otherwise than as a punishment imposed by way of disciplinary action, but does not include.

- a) Voluntary retirement
- b) Super annuation or termination of contract
- c) Termination due to renewal agreement
- d) Termination on ground of continuous ill health.

Normally variety of reasons like economy, rationalization, installation of machinery etc, have been given to discharge additional labour force.

Employees affected due to lay off or retrenchment are entitled to compensation according to Act. The Act makes it mandatory to re-employ retrenched work-man in process of employment i.e., retrenched workers gets preference over other persons.

15.10 PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES

Prevention is always preferable a good labour management policy suggests to prevent any kind of disharming or act which create good atmosphere.

The Industrial Disputes Act establishes a set of machinery to prevent and settle disputes. These authorities can be classified as statutory and non-statutory or voluntary processes. These bodies are quasi Judicial bodies, hence they shall follow principles of natural justice in this business soon to protect the interest of both parties.

The following are the different machinery to be set up under ID Act are as follows:

- a) works committee
- b) Conciliation officer
- c) Board of conciliation
- d) Court of enquiry

- e) Labour court
- f) Industrial tribunal
- g) National tribunal
- h) grievance settlement authorities
- i) joint management/consultative council
- j) Tripartite labour Machinery
- k) Collective bargaining

The above named machinery has been discussed at length in the paper - Industrial Relations. Hence the details are not given here.

15.11 LET US SUM UP

In this unit we have learnt how the ID Act works and the various provisions of the Act.

15.12 TERMINAL QUESTIONS

- 1) What is an Industrial Dispute? Discuss the causes of ID.
- 2) Distinguish between Lockout and lay off.
- 3) What is a strike? Give a note on different kinds of strike
- 4) Write a note on the following
 - a) Lockout
 - b) Causes of ID
 - c) Tripartite Labour Machinery
 - d) Collective bargaining

15.13 REFERENCES

PL Malik – Industrial Law

ND Kapoor – Industrial Law

SN Misra – Labour and Industrial Law.

UNIT 16 : INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT - 1946

Structure

- 16.0 Introduction
- 16.1 Objectives
- 16.2 Scope and Application
- 16.3 Definitions
- 16.4 Matters to be provided in standing orders
- 16.5 Procedure for submission of Draft standing order
- 16.6 Matters to be provided in the standing order
- 16.7 Conditions for certification
- 16.8 Procedure for certification
- 16.9 Effects of certification
- 16.10 Payment of subsistence allowance
- 16.11 Powers of certifying officer
- 16.12 Powers of appropriate government
- 16.13 Review questions
- 16.14 References

16.0 INTRODUCTION

Prior to the passing of this Act, conditions of employment existing in industrial establishments were governed by contracts between employer and employee. There were no uniform practice in these contracts and employers varied them according their convenience. Most of the time the contracts were discriminatory.

For the first time, in 1927 – 28, a demand was raised for statutory service conditions in industry. The Bombay Industrial Disputes Act 1938 is a first step in this direction. The Labour investigation Committee (1944-46) said that an industrial worker has the right to know the terms and conditions under which he is employed and the rules of discipline which he is expected to follow'.

Indian Labour conference also considered this question in 1944 and suggested enactment of law to regulate the terms and conditions employment. As a result the industrial Employment (standing orders) Act was passed in 1946. It came into force on April 23, 1946. The Act has been amended from time to time.

16.1 OBJECTIVES

The aims of the Act are as follows:

- a) To define precisely the terms and conditions of employment and to communicate them to the workmen in the industrial establishment.
- b) To bring about uniformity in terms and conditions of employment in all industrial establishments to which the Act applies.
- c) To regulate standards of conduct of the employers and to establish a basis for harmonious labour management relations.
- d) To ensure satisfactory employment conditions and to maintain proper discipline necessary for higher productivity.
- e) To specify the duties and responsibilities of both the employers and the employees.
- f) To provide for redressal of grievances arising out of employment or unfair treatment by employees.
- g) To provide statutory sanctity and significance to standing orders.

16.2 SCOPE AND APPLICATION

The Act extends to whole of India. It applies all industries establishment with 100 or more workmen employed. The government can also exempt conditionally or unconditionally any industrial establishment from all or any of the provisions of this Act by notification in the gazatte.

Once the Act becomes applicable it does not cease to apply due to fall in the number of workmen in that establishment below one hundred.

The Act does not apply to 1) Establishments covered under Bombay Industrial Relations Act 1946 and Madhya Pradesh Industrial Establishment (standing orders) Act 1961.

2) Workers of Industrial establishments to be the following rules apply

- a) Civil Services (CCA) Rules
- b) Civil Services (Temporary Service) Rules
- c) Civil Service Regulations
- d) Civilians of Defence Service (CCA) Rules
- e) Indian Railway Establishment Code.

16.3 DEFINITIONS

Appellate Authority:

Means the authority appointed by the government to exercise such powers as specified in the notification. But in relation to an appeal pending before an industrial court immediately before the commencement of this Act in 1965. The court will be deemed appellate authority.

Appropriate Government

It means Central government in the following cases:

- a) Industrial Establishments under the control of Central government
- b) Railway establishments
- c) Major ports, mine and oil fields.
- d) In all other cases it means state governments.

Certifying Officer:

It means Labour commissioner or a Regional Labour Commissioner and includes any other officer appointed by the appropriate government.

Employer:

It means the owner of an industrial establishment to which this Act for the time being applicable and includes

- a) in a factory, any person named as manager of the factory
- b) in any industrial establishment under the control of department, the head of the department.
- c) In any other industrial establishment any person responsible as the owner or supervisor and control the establishment.

Industrial Establishment

- a) a factory as defined in factories Act
- b) a railway as defined in Indian Railway Act
- c) an industrial establishment as defined in payment of wages Act.
- d) the establishment of a person who, for the purposes of fulfilling a contract with the owner of any industrial establishment employs workmen.

Standing orders

Rules relating to matters in the schedule to the Act.

16.4 MATTERS TO BE PROVIDED IN STANDING ORDERS.

- a) Classification of workmen , permanent, temporary, apprentices, probationers or badlis.
- b) Manner of intimating to workmen period/hours of work, holidays, paydays and wage rules.
- c) Shift working
- d) Attendance and late coming
- e) Conditions and procedure in applying for and the authority which may grant leave and holiday
- f) Requirement to enter premises by certain gates, and liability to search.
- g) Closing and reopening of sections of industrial establishments, temporary stoppage of work and rights and liabilities of the employer

- h) Termination of employment and notice there of
- i) Suspension/dismissal and notice there of
- j) Means of redress for misconduct against unfair treatment
- k) Any other matter which may be prescribed

Workmen:

Any person employed in any industrial establishment as skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied but does not include the following persons.

- 1) Who is subject to Army Act 1950 or Airforce Act 1950 or Navy Act 1957.
- 2) Who is employed in police service
- 3) Who is employed mainly in a managerial or administration capacity
- 4) Who is employed in a supervisory capacity drawing wages exceeding some limits per measure.

16.5 PROCEDURE FOR SUBMISSION OF DRAFT STANDING ORDER:

- 1) Within 6 months of the application of this Act to an establishment, the employer shall submit to the certifying officer, five copies of the draft standing orders proposed by him for adoption in his industrial establishment.
- 2) Standing orders shall cover every matter set out in the schedule to the Act which may be applicable to the industrial establishment
- 3) Draft standing orders shall be in conformity with model standing orders
- 4) Draft standing orders shall be accompanied by a statement of workmen employed in the establishment and the trade union to which they belong
- 5) A group of employers in a similar establishment may submit a joint draft of standing orders.

16.6 MATTERS TO BE PROVIDED IN THE STANDING ORDERS

- 1) Classification of workmen
- 2) Manner of intimating workers about hours of work, holidays, paydays, and wage rates
- 3) Shift working

- 4) Attendance and late coming
- 5) Conditions of and procedure of applying for and authority which may grant leave or holidays.
- 6) Recruitment to enter premises by certain gates and liability to search
- 7) Closing and reopening of sections of industrial establishments, temporary stoppage of work, rights and liabilities of the employer and workman arising therefrom
- 8) Termination of employment and notice thereof
- 9) Suspension or disunissal for misconduct
- 10) Means of redress for work-men against unfair treatment or wrongful actions of employer
- 11) Any other matter which may be prescribed.

16.7 CONDITIONS FOR CERTIFICATION OF STANDING ORDERS

Certifiable under this Act if

- 1) Provisions is made therein for every matter set out in the schedule which is applicable to the industrial establishment, and
- 2) Standing orders are otherwise in conformity with the provisions of the Act.

It shall be function of certifying officer or appellate authority to adjudicate upon the reasonableness or fairness of the provisions of any standing orders. It should not be arbitrary or inconsistent.

16.8 PROCEDURE FOR CERTIFICATION

- 1) On receipt of draft standing orders the certifying order, shall forward a copy to trade union, or when there is no trade union, to the workmen in such manner as may be prescribed.
- 2) A notice in the prescribed form requiring objections will be sent along with copy.
- 3) Ojections shall be submitted to him within 15 days from the receipt of notice.
- 4) He will give an opportunity of being heard regarding modification or addition etc.,
- 5) He will take decision later regarding modification suggested and will make an order in writing accordingly
- 6) Then he will certify the draft order. Than he will send copier of the certified standing orders and his orders to the employer, trade union and other prescribed representatives of the workmen.
- 7) Than the standing orders shall apply to all workmen employed before or after certification.

16.9 EFFECT OF CERTIFICATION

Certified orders binds all those presently in employment and those to be appointed thereafter. Orders govern the relations between the employer and employee. It is not open to them to contract themselves out of the rights and obligations created by the standing orders.

Date of operation

It shall come into operation on expiry of 30 days from the date on which authenticated copies thereof are sent or when an appeal is preferred. On the expiry of 7 days from the date on which copies of the order of the appellate authority are sent.

Register of standing order

A copy of all standing orders as certified shall be filed by the certifying officer in a register in a prescribed form maintained for the purpose. Office shall furnish copies of it on payment of prescribed fees.

Posting of standing orders

The text of the finally certified order shall be pasted in the prominent places like main gate, work place etc.,

Duration of standing order

It shall not be liable for modification until the expiry of six months from the date on which the standing order or the last modification thereof came into operation.

Modification of standing orders

- 1) An employer, workmen, trade union or representative of workmen, may apply to the certifying officer to have the standing order modified.
- 2) Such an application shall be accompanied by five copies of modification on proposed to be made.
- 3) Any modification to be made by means of agreement, then a certificate copy of that agreement shall be enclosed to application.
- 4) Once a standing is modified, and certified, it is not barred from further modification.
- 5) If the modification proposed is not in conformity with the model standing orders, then the certifying officer is not bound to accept the modification.

- 6) An application for modification can be made in the following circumstances.
 - a) Changed Circumstances
 - b) Standing orders have resulted in inconvenience, hardship or anomaly
 - c) Some facts overlooked at the time of certification
 - d) Modification is beneficial to large number.

Appeals:

Any employer, workmen, trade union or prescribed representatives of workmen aggrieved by the order, may appeal within 30 days of sending the order to appellate authority. The appellate authority has powers to

- a) confirm the standing orders in the form certified by certifying officer, or
- b) confirm after amending them

The appellate authority shall within 7 days of its order, send copies thereof to parties affected

16.10 PAYMENT OF SUBSISTENCE ALLOWANCE

Subsistence allowance is payable to the suspended workmen pending investigation or inquiry or charges of misconduct. It is as follows.

- a) at the rate of 50% of wages for the first 90 days of suspension
- b) at the rate of 75% of wages for the remaining period of suspension.

If the subsistence allowance payable is more beneficial under any other law of the state, then such allowance shall be payable.

In case of dispute regarding the allowance, dispute may be referred to Labour court under the Industrial Disputer Act 1947 and decision of such court shall be final and binding on the parties.

16.11 POWERS OF CERTIFYING OFFICER AND APPELLATE AUTHORITY

- 1) They have all the powers of a civil court for the purpose of
 - a) receiving evidence
 - b) administering Oath
 - c) enforcing the attendance of witnesses and
 - d) compelling the production of documents

- 2) They have powers of the civil court within the meaning of code of criminal procedure.
- 3) They enjoy the power of correcting any clerical or mathematical mistakes, or errors arising from an accidental slip or omission in any order passed earlier.

Temporary application of Model Standing order

Model standing orders are deemed to come into effect until the certified standing order comes into operation.

Model standing orders as per this Act are not applicable in respect of Industrial establishments in Gujarath and Maharastra state.

Interpretation of standing orders

- 1) Any question as to application or interpretation is referred to Labour Court
- 2) Labour Court decides the question
- 3) The Labour Court decision is final and binding
- 4) Labour Court is not permitted grant redress for violation of rights and obligations created under the standing order
- 5) Labour Court cannot order dismissal of workmen null and void

Offences and appeal

- 1) An employer who fails to submit draft standing order or modification is punishable with a fine extendable upto Rs.5000.
- 2) In case of continuing offence, a further fine of Rs.200 per day shall be imposed.
- 3) An employer who does not act in contravention of the standing order finally certified, shall be punishable with a fine which may extend upto Rs. 100 .. In case of continuing offence, a further fine of Rs.25 per day for the duration for which offence continues.
- 4) Without the prior sanction of the appropriate government, prosecution can be instituted
- 5) Prosecution can be instituted only in the court of Metropolitan Magistrate or second class Judicial Magistrate.

16.12 POWERS OF THE APPROPRIATE GOVERNMENT

- 1) The appropriate government may exempt any industrial establishment from all or any of the provisions of the Act.
- 2) The appropriate government may make rules to carry out the purpose of the Act. Such rules may
 - a) prescribe additional matter
 - b) set a model standing order
 - c) prescribe procedure for certifying officers or appellate authority
 - d) prescribe fees which may be charged

Before making the rules representatives of both employer and workmen shall be consulted.

Every rule made by central government shall be laid before the house of parliament and approved by both the houses.

16.13 REVIEW QUESTIONS

- 1) Discuss the provisions relating to draft standing orders.
- 2) Discuss the need for having standing orders in industrial establishments.
- 3) Critically examine the salient provisions of the Industrial employment (standing orders) Act and rules made there under.
- 4) a) Explain the object and scope of Industrial Employment (standing orders) Act 1946.
b) What are the matters to be provided in standing orders under the Act?

16.14 REFERENCE

Same as in Unit – 1

UNIT 17 : TRADE UNION ACT, 1926

Structure

- 17.0 Objectives
- 17.1 Introduction
- 17.2 Objects of the Act
- 17.3 Registration of Trade Unions
- 17.4 Rules of the Trade Unions
- 17.5 Cancellation of Registration
- 17.6 Rights and Liabilities of a Registered Trade Union
- 17.7 Privilege and immunity of Registered Trade Union
- 17.8 Recognition of Trade Union
- 17.9 Terminal Questions
- 17.10 Reference

17.0 OBJECTIVES

At the end of reading this unit you will be able to understand

- Meaning of Trade Union
- Legal requirements of forming and working of Trade Unions
- Duties and liabilities of Trade Union
- Privileges of Trade unions
- Recognition of Trade Union.

17.1 INTRODUCTION

Freedom of association has been regarded as one of the important rights of human being. This has been recognized as a fundamental right.

'Association' generally means a "combination or group of persons having common purpose, where each member of the group is expected to work effectively and jointly to achieve the purpose so as to reach their result.

Industrial Revolution gave birth to innumerable industries. It led to neglect of working conditions. It is the cause for the formation of a strong force by workers to get their problems solved.

The pathetic socio-economic conditions prevailing amongst the working class gradually compelled them to organize themselves to demand better share and benefits of industrial production.

Trade unions may therefore, be regarded as an organized response of labour class to achieve their purposes in a better way through class action.

17.2 OBJECTS OF THE ACT

The trade union Act 1926 came into force from June 1, 1927. It has undergone several amendments in 1928, 1947, 1960, 1962 and 1964. This Act was comprehensively amended in 1982.

The legislation brings all the activities of the Trade Unions in India within its scope. The Act provides for protection, of the office bearers of the unions. It also accords power to the trade unions to acquire and hold moveable and immovable property and also to institute and to defend legal suits. Further, every registered trade union, in order to pursue its legitimate activities, is accorded with protection from civil and criminal liability.

The meaning of Trade Union

According to Sec.2 (b) of the Act, trade union means “ any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between, workmen and employers, workmen and workmen and Employers and employers.

A trade union may also be formed for imposing restrictive conditions on the conduct of any trade or business. It would also include a federation of two or more trade unions.

Thus the definition, clearly envisages the object of maintaining harmony in the industrial activity. Since the object is achievement of industrial harmony it can be secured not merely by maintaining such a relation between employers and workmen but also between workmen and workmen. Moreover these objectives have been referred to as primary, which would mean, there can be other ‘secondary’ objectives of trade union.

17.3 REGISTRATION OF TRADE UNION

According to Sec.4 of the Act any seven or more members of a trade union, subscribing their names to the rules of the Trade Union and also by complying with the provisions of the Act regarding registration, may apply for registration. However, the minimum of seven members’ subscription is required only at the time of filing the application for registration and according to sec 4(2) subsequent reduction in their number (provided such reduction does not exceed half the total number of applicants) shall not render the application invalid.

The requirement of seven or more members by subscribing clearly show that they must have already become members of the trade union even before subscribing their signature to the application.

According to Sec.5(1) every application for registration should be addressed to the Registrar of Trade Unions and should contain a statement of the following particulars-

- a) The names, occupations and addresses of the members making the application.
- b) The name of the Trade Union and its head office.
- c) The titles, names, age, addresses and occupations of the office bearers of the trade union.

The application should also be enclosed with a copy of the rules of the trade union.

If, however, more than a year has already closed since the formation of the trade union at the time of a application, it should also be accompanied by a statement of a assets and liabilities of the trade union in a prescribed form. The office bearers of the union should not suffer from any disqualification stated under sec21 A.

17.4 RULES OF THE TRADE UNION

Sec.6 of the Act requires that every trade union in order to entitle for registration should provide the following matters in its rules.

- a) The name of the Trade Union.
- b) The whole of the objects for which the trade union has been established.
- c) The whole of the purposes for which the general funds of the trade union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under the Act.
- d) The maintenance of the list of the members of the trade union and adequate facilities for the inspection thereof by the office-bearers and members of the trade union.
- e) The admission of ordinary members who shall be persons actually engaged or employed in an industry with which the trade union is connected, and also the admission of the number of honorary or temporary members as 'office bearers' required under sec.22 to form the executive committee of the union.
- f) The payment of subscription by members of the trade union which shall be not less than twenty five (25) paise per month per member.
- g) The conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members.
- h) The manner in which the rules shall be amended, varied or rescinded.
- i) The manner in which the members of the executive and other 'office bearers' shall be appointed or removed.
- j) The safe custody of the funds of the trade union, an annual audit in such manner thereof, and adequate facilities for the inspection of the account books by the office bearers and members of trade union.
- k) The manner in which the trade union may be dissolved.

The Registrar can call for further information for the purposes of satisfying himself that the application complies with the provisions of sec.5 and 6 of the Act. If the required information is not supplied he can refuse registration of the trade union. Further, the Registrar has powers to require the persons applying for registration to change the name of trade union if in his opinion it is identical with an existing one or nearly resembles the existing one. Upon satisfying that the trade union has complied with all requirements of the Act, the Registrar shall register the trade union and issue a certificate of registration.

17.5 CANCELLATION OF REGISTRATION

According to Sec.10 of the Act, the Registrar of Trade Unions may withdraw or cancel the certificate of registration issued by him under the following circumstances.

1) On the application of Trade union

When the members of a union themselves desire the cancellation they may submit an application to that effect upon the verification of which, with regard to the intention of the members, the Registrar may cancel the registration.

2) Pay the Registrar himself:

The Registrar can withdraw the registration, provided he is satisfied, for any of the following reasons, he can do so.

- a) The certificate of registration has been obtained by force and or mistake.
- b) The trade union has ceased to exist.
- c) The trade union has willfully and after notice from the Registrar, contravened the provisions of the TU Act.
- d) The trade union has allowed any rules to continue in force which is inconsistent with the provision of the Act.
- e) The trade union has received any rule providing for any matter as prescribed for under sec.6 of the Act (concerning the rules of the trade union)

However, before taking any such decision to cancel the registration the registrar is required to give not less than two months, previous notice in writing specifying the grounds on which he is proposing to withdraw or cancel the certificate unless the cancellation is caused by of the trade union itself.

Appeal

Under sec.11 of the Act any aggrieved person can appeal to a court of competent authority against the orders of refusal of the Registrar of Trade Union or against the orders of withdrawal or cancellation of registration within the prescribed time limit. If the Head office of the trade union is within the limits of a presidency town, the court of competent jurisdiction would be High court, or if the Head Office is situated in any other area the court of competent authority or jurisdiction will be a court not inferior to the court of a principal civil Judge court as the government may appoint in this regard.

It is also provided that in the event of disposal of the case by such courts as mentioned above the aggrieved person has the right to further appeal to the high court.

17.6 RIGHTS AND LIABILITIES OF A TRADE UNION

Every registered Trade Union is accorded with a legal status enjoying certain powers. Thus under sec.13 it is provided that every registered trade union shall be a body incorporated by the name under which it is registered, and it shall have perpetual succession and a common seal with powers to acquire and hold both moveable and immovable property and also to enter into contracts. It can be and be sued under its name.

a) Right to spend general funds

Like any other organization a trade union would have to maintain funds for the efficient discharge of its functions. Under the Act, there is scope to maintain both the general funds and political funds.

Under sec.15 of the Act, a registered trade union can spend from the general funds only for the following objects.

- 1) The payment of salaries, allowances and expenses to office bearers of the trade union.
- 2) The payment of expenses for the administration of the trade union including audit of the accounts of the general funds of the trade union.
- 3) The prosecution or defence of any legal proceeding to which trade union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the trade union on such rights or any rights arising out of the relations of any member with its employer or with person whom the member is employed.
- 4) The conduct of trade dispute on behalf of the trade union or any member thereof.
- 5) The compensation for members for loss arising out of trade disputes.
- 6) Allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment of such members.
- 7) The issue of or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment.
- 8) The provision of educational, social or religious benefits for members (including the payment of expenses of funeral or religious ceremonies for deceased members) or for the dependents of members.
- 9) The upkeep of periodicals published mainly for the purpose of discussing questions affecting employers or workmen as such.

- 10) The payment in furtherance of any of the objects on which the general funds of the trade union may be spent, out of contributions to any cause intended to benefit workmen in general (subject to certain restrictions)
- 11) Subject to any conditions contained in the notification, any other object notified by the appropriate government in official gazette.

In addition to the above objects the trade union can spend out of general funds in some discretionary cases also according to Sec.15 of the Act.

2) Right to spend political funds

Sec.15 of the Act has imposed restrictions on the use of general funds only for some specific objects, except under discretionary situation.

If the trade union wishes to carry out certain political activity also, it has to create separate fund called political fund u/s 16 of the Act. Expenses in connection with civil and political interests of the members must be made out of political fund. The following are objects for which political fund may be utilized.

- a) Payment towards the expenses of election to legislature or parliament or local authority relating to candidates contesting on behalf of the trade union
- b) Expenses of meeting relating to above elections.
- c) Maintenance expenses of any member of parliament/Legislature or Local authority representing trade union.
- d) Expenses of holding a political meeting
- e) Expenses relating to printing and distribution of literature about trade union contribution to political fund in voluntary and such members should be excluded from playing any role in the control and management of political funds.

3) Right to change the name and to amalgamate

Under sec 23 of the Act, any registered trade union with the consent of 2/3 of the total number of its members can change its name.

Under sec 24 of the Act, any two or more registered unions can get amalgamated into one union, provided that 60% of the members vote in favour of the proposal.

Notice of request to change the name, signed by the secretary of the union and seven other members of union must be sent to Registrar of Trade Unions for approval. If he is satisfied by the conditions and such changed name is not resembling any other already registered unions name, he will grant the change of name, otherwise he will refuse the request.

Further u/s 26 of the Act, the Registrar of Trade Unions may institute legal proceedings against the union for misleading the Registrar or infringing the right of other unions.

Similarly, an amalgamation should not prejudice any right of any other trade union or any right of any of them.

The following are the duties and liabilities of a registered trade union in general.

- 1) Duty of maintenance of general funds of a registered trade union u/s 15 of the Act.
- 2) Duty of maintenance of political fund u/s 16 of the Act
- 3) Duty to file returns. Every year general statement should be audited in the prescribed manner and duly sent to the Registrar.

There is a penalty u/s 31 of the for failure to file the return (ie., the audited statements) supply of wrong statements also attract penalty.

- 4) Maintaining the books of accounts of the union and the list of members for inspection by any number or the Registrar at any time.

17.7 PRIVILEGES AND IMMUNITY

Every registered trade union should work efficiently without any hindrance or fear for this purpose, it is necessary to have certain legal immunity and privileges accorded by law. Following are some of them.

1) Immunity under criminal liability

According to sec.17 of the Act, no office bearer or member of a registered trade union shall be liable for punishment under Indian penal code (sec 120 (3) (2) in respect of any agreement between the members for the purpose of furthering any such object of the trade union, unless the agreement itself is an agreement to commit offence.

Thus, in the course of pursuing the objective of trade union, offences like assault, criminal trespass, unlawful assembly etc., are committed. In such cases, the members or office bearers of the union will become liable under sec.120 of IPC. Then the immunity U/S/17 of Trade union Act applies.

2) Immunity under civil liability

In furtherance of a trade dispute to which a member of the union is a party on the ground that situation induces another person to break a contract of employment. In such cases u/s 18 of the Trade union Act, the legal proceedings shall not be maintainable in any civil court.

However, such an immunity is not extended for any act which is not in contemplation or furtherance of trade dispute even if such suit or legal proceedings is against a registered trade union or office bearers.

Immunity applies only in respect of all general trade union activities.

3) Privileges to enter into agreements in restraint of trade

Sec.19 of the Trade union Act provides that an agreement between the members of the registered trade union in restraint of trade shall not be void or voidable.

Disqualification of office bearers

U/S 21A of the Trade Union Act a person shall be disqualified from being chosen a member of the executive committee or an office bearer of a registered trade union; if

- a) He has not attained the age of 18 years.
- b) He has been convicted by a court in India of an offence involving moral turpitude and sentenced to imprisonment, unless a period of 5 years has lapsed since his release.

If a member of the executive has been convicted for any offence involving moral turpitude and sentenced to imprisonment, prior to the commencement of Trade Union (Amendment) Act 1964, shall on the date of commencement cease to be such member or office bearer unless a period of 5 years has lapsed since his release before that date.

U/S 21 of the Act, any person who has completed 15 years of age can be a member of the registered trade union with all the rights.

Proportion of office bears connected to Industry

Sec.22 provides that not less than one – half of the total number of the office bearers of a registered trade union shall be persons actually engaged or employed in industry with which the trade union is connected.

17.8 RECOGNITION OF TRADE UNION

Chapter IIIA concerning recognition of Trade Union was inserted in Trade Union Act 1947. These provisions has not come into force.

U/S 28c there is a provision for recognition by virtue of an agreement between employer and office bearers of the trade union, such a trade union during the period in which agreement would be in force, is deemed to be a recognized trade union.

U/S 28E a Trade union would not be entitled to recognition by the order of a labour court unless it fulfills certain conditions.

Ordinary membership of union is restricted to those employed in that industry to those employed in that industry, no provision is made for exclusion of any class of workmen etc.

U/S Sec 29C, on a request made by the Registrar of Trade Union or employer, the registration granted can be withdrawn under the following circumstances.

- a) Unfair practice is being indulged by executive members.
- b) Failure of the trade unions to submit return
- c) Trade union has ceased to be representative of the workmen.

17.9 LET US SUM UP

From the above discussion you have understood how a trade union starts working, responsibilities and liabilities of trade unions and how a trade union is recognized and derecognised. The Act is made to put the trade unions on proper line and make it work in an orderly manner.

17.10 SELF STUDY QUESTIONS

- 1) Discuss the meaning, scope and objectives of a trade union under the Trade Union Act.
- 2) Discuss the rights and liabilities of a trade union
- 3) Discuss the provisions concerning the registration of a trade union, what are the circumstances under which it may be cancelled?
- 4) What are the objectives for which the general funds of a trade union may be spent?
- 5) What is political fund and how it differs from general fund? What are the objectives for which political funds of trade union may be spent?
- 6) What are the privileges and immunities accorded to a registered trade union?

17.11 REFERENCES

PL Malik – Industrial Law

ND Kapoor – Industrial Law

SN Misra – Labour and Industrial Law.

NOTES

1. The first part of the notes discusses the importance of maintaining accurate records of all transactions.

2. It is essential to ensure that all entries are supported by appropriate evidence and documentation.

3. The notes also emphasize the need for regular reconciliation and review of the accounts.

4. Furthermore, it is important to maintain a clear and concise record of all financial activities.

5. The notes conclude by stating that accurate record-keeping is a fundamental principle of good financial management.

6. In addition, the notes highlight the benefits of using a systematic approach to recording transactions.

7. Finally, the notes stress the importance of staying organized and up-to-date with all financial information.

8. The notes also mention the importance of keeping records for a sufficient period of time.

9. In summary, the notes provide a comprehensive overview of the key principles and practices of financial record-keeping.

10. The notes are intended to serve as a guide for anyone looking to improve their financial record-keeping practices.

11. The notes are also a valuable resource for anyone interested in learning more about financial management.

12. The notes are available in both printed and digital formats for easy access and reference.

13. The notes are a free resource provided by the organization to support its mission of financial literacy.

14. The notes are also available in multiple languages to ensure accessibility for a wider audience.

15. The notes are a key component of the organization's financial education program.

16. The notes are regularly updated to reflect changes in financial practices and regulations.

17. The notes are a valuable tool for anyone looking to take control of their financial future.

18. The notes are also a great resource for anyone looking to improve their business's financial health.

19. The notes are a key part of the organization's commitment to transparency and accountability.

20. The notes are a testament to the organization's dedication to providing high-quality financial education.

BLOCK - VI :

UNIT 18 : POWERS OF UNION AND STATE GOVERNMENTS IN LABOUR MATTERS

Structure

- 18.0 Introduction
- 18.1 Main postulates
- 18.2 Objectives of planning in India
- 18.3 Industrial policy in the plan period
- 18.4 Administrative machinery at the center and state level
- 18.5 Central administrative machinery
- 18.6 Autonomous organizations
- 18.7 State administrative machinery
- 18.8 Summary
- 18.9 Key words
- 18.10 Questions
- 18.11 Books for reference

18.0 OBJECTIVES

After study this unit, you should be able to understand,

- a. Labour policy, its genesis and significance in the modern context
- b. Industrial development under the plan period
- c. Administrative machinery at the central and state level

18.1 INTRODUCTION

After Independence it was largely felt that the labour policy must emphasize upon self-reliance on the part of the workers. Since independence till 1954, all official pronouncement emphasize that labour shall become self-reliant. An equally forcefull view had been to prefer reliance upon the government. This cross current approach leads to a new approach known as "tripartism". After 1957, the government paid reliance on three party approach, namely the Trade union representing the workers, the employers, and the government. Out of the three the role of the government is more important. Annual labour conferences and the permanent standing labour committee served as the chief instrument of tripartism. These conferences advocates, amongst many things ; viz, workers participation in management , worker's education, worker's committees and minimum wage legislations.

Tripartism is an approach which lays down stress on the identity of interest between labour and capital i.e., they are the partners in the maintenance of production and the building up of the national economy. The labour policy has proceeded on a realization that the community as a whole, as well as individual employers are under an obligation to protect the welfare and secure to them their due share in the gains of economic development.

18.2 MAIN POSTULATES

The main postulates of labour policy may be summed up as follows :

1. Recognition of the State as the custodian of the interests of the community, as the catalyst of change and welfare programmes.
2. Recognition of the right of workers to peaceful direct action if justice is denied to them.
3. Encouragement to mutual settlement, collective bargaining and voluntary arbitration.
4. Intervention by the state in favour of the weaker party to ensure fair treatment to all concerned.
5. Primacy to maintenance of industrial peace.

6. Adequate enforcement of legislation.
7. Enhancing the status of workers.
8. Tripartite consultation.
9. Ensuring fair wage standards and provisions of social security.

18.3 OBJECTIVES OF PLANNING IN INDIA

After attaining independence, the government of India set up the planning Commission in 1950 with the Prime Minister as the chairman. The purpose of the commission was to assess carefully the human and material resources of the country and to prepare the plans for the effective use of resources. The long term objectives of economic planning in India have been spelt out in various plan documents. These long term objectives are generally repeated and reiterated in all successive documents. Besides, each plan would have specific objectives to achieve within the time limit of the plan. The long term general objectives of India's planning can be classified under five main heads. They are 1) Increasing national income 2) Reducing inequalities in the distribution of the income and wealth 3) Elimination of poverty 4) Providing additional employment and 5) Alleviating the three bottle necks, namely, agricultural production, manufacturing capacity for producers goods and balance of payments.

18.4 INDUSTRIAL POLICY IN THE PLAN PERIOD

The Industrial relations policy during the plan period is in fact, the continuation of some of the earlier effects made in the direction of maintaining industrial peace. The five year plan policies starting from 1950, with slight differences in emphasis from plan moulded the industrial policy of government of India. Similarly, the National Commission on Labour 1969 appointed by the government in its report made for reaching recommendations for reforms in various spheres of labour laws which were largely implemented. Each aspect can be discussed below.

The first plan emphasized the need for industrial peace in industry, the ultimate oneness of interest and the virtue of harmonious relations between capital and labour. The plan encouraged mutual settlements, collective bargaining and voluntary arbitration. It observed, "it is incumbent on the state to arm itself with legal powers to refer disputes for settlements by arbitration or adjudication, on failure of efforts to reach an agreement by other means".

The plan regarded that workers right of association and collective bargaining should be accepted as the fundamental principle of mutual relationship without reservation and that the employer, Employees relationship should be accepted as a partnership in constructive endeavors to promote satisfaction of the economic needs of the community in best way.

The plan stressed that the machinery to settle disputes should be managed in accordance with these principles :

- a. Legal technicalities and formalities of procedure should be used to the minimum possible extent.
- b. Each dispute should be finally and directly settled at a level suited to the nature and importance of a case.
- c. Tribunals and courts should be manned by specially trained expert personnel.
- d. Appeals to these courts should be reduced.
- e. There should be prompt compliance with the award.
- f. There shall not be strikes or lock-outs without notice or in violation of agreements.
- g. Workers committee shall be constituted to preserve amicable industrial relations.

The second plan also recommended increased association of labour and management, which might be achieved by councils of management consisting of representations of management, technicians and workers. It emphasized the need for the avoidance of indiscipline in industry. And in pursuance of this, a code of discipline in industry was agreed upon in 1958. It suggested the need for having one union in an industry. It suggested that there should be restraint on extent of outsiders as office bearers of trade union should have additional protection against victimization and that the finances of trade unions should be strengthened.

In third year plan laid great stress on legal sanctions for the settlements for the settlements of disputes. It laid stress on the prevention of unrest by implied action at the appropriate stages and giving adequate attention to root causes. This involves a basic change in the attitudes and outlooks of parties and the new set of readjustments in their mutual relations. The plan suggested that "workers participation in management should be accepted as a fundamental principle and urgent need. It has also emphasis on an intensive programme of workers education in all establishments where such councils are set up.

In the fourth year plan no fresh direction or any shift in the government industrial relations policy was indicated. It made a very brief reference to industrial relations. It said :

- a. In the field of industrial relations, priority will be accorded to the growth of a healthy trade union movement so that it could secure better labour management relations
- b. More emphasis should be paid on collective bargaining and productivity should be increased through labour management co-operation and
- c. Industrial disputes should be settled by voluntary arbitration

It recommended that summary powers be conferred on labour courts and separate works committees should set up at the plant level.

The fifth year plan stressed the need for greater involvement of labour by ensuring its vertical mobility in industrial organizations. It observed that stress will be laid on strengthening industrial relations conciliation machinery, better enforcement of labour legislation and labour legislations, imparting training to labour officers, improvement of labour statistics and undertaking studies in the field of wages and productivity. Special attention will be devoted to bring about improvement in productivity in all spheres of the economy.

The sixth plan declared, industrial harmony is indispensable for a country if it is to make economic progress. It argued for adequate consultative machinery and grievance redressal procedure for avoiding industrial strife. In furtherance of the policy of the workers participation in management, it suggested for a system of consultative and joint decision making body. According to the plan this could "ensure frictionless operation at various levels, provide job satisfaction, release the latent creative energy and enrich the management to the common ideal of better performance".

The seventh year plan observed, "there is considerable scope for improvement in industrial relations which would obviate the need for strikes and the justification for lockouts. In the proper management of industrial relations, the responsibility of union and employees has to be identified and inter union rivalry and intra-union divisions should be avoided.

Apart from five year plans, the industrial policy resolutions 1956 and 1962, report of National Commission of Labour, 1959 an tripartite committee on comprehensive industrial relations law have moulded or reflected labour policy of Government of India.

The Industrial policy resolution 1956 observe. "It is necessary that proper amenities an incentives should be provided for all those engaged in industry. The living and working conditions of workers should be improved and their standard of efficiency raised. The maintenance of industrial peace is one of the prime requisites of industrial progress. In a socialistic democracy, labour is a partner in the common task of development and should be joint consultation and workers and technicians should be associated progressively in management."

18.5 ADMINISTRATIVE MACHINERY AT THE CENTRE AND STATE LEVEL

In a federal system like India, co-operative efforts between federal and State Government in the mechanism of applications of labour law were contemplated ever since the Government, under the union list of seventh schedule on the subject like defense industries, railways, major port, airways oilfields, banking, insurance, safety in mines, industries declared to be public interest and industrial disputes concerning the Union Government Employees. In these areas concerning legal regulation of labour relations, only the Union Government has powers. But a major share of labour law can be found in concurrent list

of the seventh schedule, entries 21,22 and 23, which relates to trade union, industrial disputes, social security, welfare of labour including conditions of work, P.F Compensations, old age benefit and maternity benefits. A smooth functioning of this principle is enabled by suitable Centre State relations and adequate legislative arrangement. The Union Government has power of issuing direction to the State Governments about administrative of law. Further the executive power of the State Governments shall be so exercised as to comply with law.

Labour Administration

In India, both Central and State Governments enact and administer labour laws. The division of Jurisdiction between Central and States is laid down by the constitution. The ministry of labour and employment of the Central Government is the main agency of policy formation and administration in all labour matters. Together with the State Government, the local bodies and the statutory Corporations/ Boards such as Employees State Insurance Corporation and Central Board of workers Education it co-ordinates and monitors the implementation of policies and decision of the tripartite committees.

While the labour secretary is overall in charge of both the policies and administration, the commissioner of labour in the states is the operative arm for the implementation of labour laws. He is also the registrar of trade union. In some states, he has the functions of the State Director of the National Employment Service or of the Chief Inspector of factories. In states where there is no separate authority for labour welfare, the commissioner (State) look after this function.

A number of directorates have been setup to look after specific aspects like employment training, advisory service and research help to the factory inspectors of different states etc.

Under the Industrial Dispute Act several authorities have been created to investigate and settle disputes. They include works committee conciliation officers, board of conciliation, arbitration, labour Courts, Industrial Tribunals and National tribunals.

Besides there are wage boards, commissions, committees of enquiry, tripartite forums like the Standing Committee of Labour and Indian Labour Conference to provide direction and advice on matters that comes under their jurisdiction.

On the whole, there are several institutions. Agencies administering a remedy of legislative and other provisions. As in the case of legislation, in labour administration also there is significant scope of integrating the numerous authorities and having a unified cadre of labour judiciary service. This makes for a speedier co-ordinated and effective administration in the absence of which employees and employers have to run around a host of institutions/ agencies in regard to labour matters.

18.6 CENTRAL ADMINISTRATIVE MACHINERY

The Ministry of Labour and Employment, Government of India is the major agency in the country, which is looking after the administration of labour matters. It is responsible for the implementation of welfare funds for mine workers. It is also a channel of communication between Central Government and ILO and plays important role in the country. The department has several attached offices, subordinated officers and autonomous organisations.

Attached officers

1. The chief labour commission of India looks after the welfare of employers of Central Government and conciliates industrial disputes. It is also called as industrial relations machinery. The function of IRM is prevention and settlement of industrial disputes in mine, oil fields, major ports, banks, insurance companies and industries carried on by or under the authority of Central Government.
2. The directorate general of factory advisory service and labour institutes deals with safety health and welfare of workers in factories and docks. It co-ordinates the operation of Factories Act. It provides training in productivity, safety and management.
3. The directorate general of employment and training formulates the policies, procedures, standards and co-ordination of employment services and vocational training.
4. The directorate of labour bureau collects, compiles and publishes statistical and other informations about employment, wages, industrial disputes, etc.,

Sub-Ordinate Offices

The directorate general of mines safety enforces the Mines Act 1952 and rules made there under. It deals with maternity benefit to non-coal miners. It also manages welfare funds for workman in coal, iron, mica and manganese mines and for Beedi workers.

18.7 AUTONOMOUS BODIES

1. The ESI Act 1978 – responsible for implementation for medical card and cash benefit in cases of sickness, maternity and employment injury.
2. The EPF Organization : deals with provided fund, family pension and deposit linked insurance schemes.
3. The Central Coal Mines Rescue Stations Committee – deals with the responsibility of establishment, maintenance and proper functioning of the rescue stations.

4. The National Council For Safety in Mines – to educate the workers working in mines.
5. The National Safety Council-Promotes Safety in factories.
6. The Central Board of Workers Education – Trains the Workers and tells their rights and duties.
7. The National Labour Institute conducts research on industrial relations personnel Management, labour welfare etc.,

18.8 ADMINISTRATIVE MACHINERY AT STATE LEVEL

Realizing the need for decentralized administration of labour laws, the responsibility of implementing the labour law in respective state with suitable mechanism is entrusted upon states in many of the labour legislation. They are as follows

1. All the states in India established labour commissioners for the administration of labour legislations. These commissions are assisted by deputy labour commissions, labour commissioner and other labour officers.
2. The main object of the Trade Union Act 1926 is to confer a legal and corporate status on regard. Trade Unions. The Act provides immunity from Civil and Criminal liability to Trade Union executives and members for benefit trade union activities. The Trade Union Act is administered by the State Governments, which are required to appoint registrars of trade unions to look after the proper compliance of the provisions of the Act. The registrar has the power of receiving application, asking for details, hearing and registering the trade union. The State Government also defines the local limits within which they shall exercise and discharge the powers and functions so specified.
3. The Factories Act was enacted in 1948 to ensure adequate safety measures and to promote the health and welfare of the workers employees in factories. It also seeks to prevent haphazard growth of factories through the provisions there is relating the approval of plans by the chief inspector of factories before erection of the factory building is started.

State Government will administer the Factory Act through their own factory Inspectors. The onus of compliance with the provisions of the Act wholly rests on the occupier of the factory, through certain obligations are impose on workers. The Directorate General of Factory Advice Service and labour institutes co-ordinates the work of enforcement of the Act throughout the country, frames model rules and suggests amendments to the Act and the rules in consultation with the State Chief Inspectors of Factories. Penalties are prescribed for contravention of any or the provisions of the Act. The Inspections under this Act inspect the factory premise, enquire, whether conditions of safety, health and welfare and complied with, pass orders for compliance with the law and record evidence for taking further action.

4. The Industrial Disputes Act 1947 provides a machinery for peaceful establishment of works committees to promote harmonious relations between the employers and workers. It introduces the principle of compulsory adjudication and prohibited strikes without notice in public utilities.

Works committee : Appropriate Government have been empowered to prescribe that works committees shall be established in which 100 or more are employed.

Conciliation and Boards of conciliation : The appropriate Government are authorised to appoint conciliation officers and Board of Conciliation for mediation, negotiating and settlement of Industrial dispute. The Act makes it compulsory for the Government to refer and disputes relating to public utility services for conciliation, but in case of other disputes, the Government can exercise discretion. A settlement arrived and in the course of conciliation proceeding's becomes binding on all parties to the dispute.

Adjudication : The act provided for 3 system original tribunal viz, labour commissions Industrial tribunals and National tribunals while the first tow can be set up either by State or Central Government. Only the Central Government can appoint National tribunals.

5. The main purpose of Payment of Wages Act 1936 and the Minimum Wage Act of 1948 is to ensure regular and prompt payment of wages and to prevent the exploitation of a wages earned by prohibiting arbitrary fines and deductions form his wages.

The inspections of factories U/S 8 (1) of the Factories Act, shall be an inspector for the purposes of the Payment of Wages Act in respect of all factories within the local limits assigned to him Sec 14 (1). The State Government may also by notification appoint such other person as it thinks fit to be inspectors for the purposes of the Act, and they are empowered to make inquiries about wage claims and file charge sheet against the employer for payment of wages lesser than the minimum wages. Further advisory boards and committees are constituted to the process of fixing the minimum wage.

6. The object of the Payment of Bonus Act 1965 is to maintain peace between labour an capital by allowing the employees, in recognition of their right, to share in the prosperity of the establishment reflected by the contributions by the contributions made by capital, management and labour. The purpose of the Act is to make payment of Bonus to workmen in certain categories a statutory obligation.

The appropriate Government may appoint such persons as it thinks fit to be inspectors for the purpose of the Act and may define the limits within which they shall exercise jurisdiction and he can exercise such powers as may be prescribed by the Act.

7. The Workmen's Compensation Act seeks to impose an obligation upon employers to pay compensation to workers for accidents arising out of and in course of employment, resulting in

death of total or partial disablement for a period exceeding three days. Compensation is also payable for some occupational diseases contracted by workman during the course of their occupation. For the enforcement of the Act sec. 19 to 31 provides for compensation and the methods for the settlement of claim for compensation. A Commissioner may choose one or more persons possessing special knowledge to assist him in holding inquiry of any matter and deciding any matter referred to him for decision under the Act.

8. The Employees State Insurance Act of 1948 provides certain cash benefits to employees in case of sickness, maternity an employment injury and to make provisions for certain other related matters. The dependent also are covered for medical benefits they receive person if a worker dies of an employment injury.

The E.S.I scheme is being administered by the E.S.I corporation which has been setup by Central Government. A standing committee has been constituted from among the members of E.S.I Corporation to act as an executive body for the administration of the scheme under the general superintending and control of the E.S.I Corporation. A medical benefit council has been set up to advise the E.S.I Corporation may appoint inspector for the purpose of the Act.

9. The purpose of the Employees Provident Fund and Miscellaneous Provision Act 1952 is to make some provision for the further of the Industrial worker after he retires or for his dependents in case of his early death. It applies to all factories and establishment of any notified industry, if they employ 20 or more persons.

The Central Government constitute a Centre Board of Trustees for administering the employees provident fun, which is a tripartite boy consisting representatives of employer's employees and persons nominated by the Central and State Government. The Central Government is empowered to constitute for any state, a board of trustees in consultation with that State Government. The State Government shall exercise such powers and perform duties as the Central Government may declare from time to time. The Central Government shall appoint a Central Government provident fund commissioner who shall be chief executive officer of the Central Board.

10. The origin of Gratuity was in the nature of gift. It was a gratuitous payment. The concept of social justice altered the concept of gratuitous payment and the Payment of Gratuity Act 1972 made statutory social obligation of the employer. The coverage of Act is extensive and in case of most other social security legislations.

The appropriate Central or State appoints a controlling authority i.e inspectors to administer the provision of the Act and conduct inquiry in to any disputes or claim. It may be general or special order, define the area to which the authority of an inspectors so appointed shall extend.

18.9 SUMMARY

Realizing the need to decentralize administration of labour laws, the responsibility of implementing the labour law in respective state with suitable mechanism is entrusted upon state in many of the labour legislations. For an effective implementation of labour legislation tripartite co-operation participation by Government official, employer and employee are very essential. The trade unions can be watch dogs for implementation of labour laws and develop co-ordination with governmental machinery for this purpose. Workers participation in management will attain better compliance with labour law. Further the employee should realize that industrial harmony, safety and welfare of workers by compliance with the law will bring more profit in the long run.

18.10 KEY WORDS

- a. **Labour policy** : Labour policy refers to those activities of the state which influence the growth of the Industrial Economy of a Country.
 - b. **Industrial Policy in the plan period** : The Industrial policy during the plan period is infact, the continuation of some of the earlier effects made in the direction of maintaining industrial peace.
 - c. **Labour Administration** : In India, both Central and the State Governments enact and administer labour laws. The division of jurisdiction between Central and State is laid down by the constitution.
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18.11 QUESTIONS

1. Discuss the salient features of Industrial Policy India
2. Write a note on the evolution of labour policy of Government of India as emerged through five year plan policies.
3. Explain the mechanism of Centre-State co-ordination in the implementation of labour law.
4. What are the administrative mechanism for implementation of labour law at central level
5. Explain the bureaucratic hierarchy for implementation of labour law.
6. Write a note on administrative machinery at the state level for implementation of labour law.
7. Centralised legislation and decentralised administration is the suitable method for smooth formulation and implementation of labour law in a country like India, Discuss.

18.12 BOOKS FOR REFERENCE

1. Labour Law & Industrial Laws - Goswami
2. Industrial Relations & Labour Laws - S.C. Srivastava.
3. Labour an Industrial Law - S.N. Misra
4. Industrial Relations - Arun Monappa.
5. Labour an Industrial Law - Pillai
6. Hand book of Labour Laws - S. Krishnaswamy.

UNIT 19 : INFLUENCE OF ILO ON INDIAN LABOUR LEGISLATION

Structure

- 19.0 Objectives
- 19.1 Introduction
- 19.2 Objectives of the ILO
- 19.3 Organisation
- 19.4 Functions of ILO
- 19.5 ILO conventions
- 19.6 Ratification Procedure of ILO standards
- 19.7 Influence of ILO recommendations on Indian Labour Legislation
- 19.8 Summary
- 19.9 Key words
- 19.10 Questions
- 19.11 Reference

19.0 OBJECTIVES

After analysis of this unit, you should be able to understand,

- a. The brief history of origin of ILO, its objectives and functions
- b. Organisation of ILO and their functions of organs
- c. ILO Conventions, International labour code and ratification procedure
- d. Impact of ILO conventions and recommendations on Indian labour legislation

19.1 INTRODUCTION

Historically, the International Labour Organisation is an outgrowth of the social thought of the 19th century. Conditions of workers in the wake of the industrial revolution were increasingly seen to be intolerable by economists and sociologists. Social reformers from Robert Owen onwards believed that any country or industry introducing measures to improve working conditions would raise the cost of labour putting it at an economic disadvantage compared to other countries or industries. That is why they laboured with such persistence to persuade the powers of Europe to make better working conditions and shorter hours, the subject of international agreements. Before the advent of ILO in 1919 labour matters had been given secondary importance in international affairs. International conferences on labour legislation held in Berlin in 1880 & in Berne in 1905, 1906 and 1913 on the initiative of the German and Swiss Governments. An International association for labour legislation was formed in 1900 at Basle to collect and disseminate information. This forerunner of the ILO with its headquarters in Basle undertook the translation and publication of labour laws of many countries. But all these lacked the strength for uniting the international labour as they lacked the support of several nations in the world.

The adhoc international conferences on labour legislation in 1890, 1905 & 1913. taught desirability of a permanent body in the field of international co-operation labour matters. After first world war, then the League of Nations was formed (1917), ILO was constituted as a component of the league through the treaty of Versailles. At the demise of the League in 1946, its reconstitution took place under the declaration of Philadelphia in 1944. Its treaty with the United Nations brought it a status of specialized agency.

It would be extremely difficult to establish durable international peace without providing social justice to the millions of working of people all over the world. With this objective the International Labour Organisation was established on 11 April 1919. The first conference of the ILO was held at Washington in October 1919, but U.S.A. did not take part in its deliberations as it was not a member and later joined the organization in 1934.

The ILO symbolizes social justice, universal peace and human dignity. India's policies and programmes which she pursues in the fulfillment of her obligations towards people, are also based on similar concepts, namely, social justice, universal peace and human dignity. Its main objective is the improvement of labour conditions. The unique feature of this organizations that, the representatives of management, labour and government participate in its proceedings. In 1946, when the United Nations Organisation came in to existence, the ILO became the first specialized agency of the organization.

The ILO was born as a result of the peace conference convened at the end of World War I at Versailles. As an original member to the treaty of peace, India became a member in 1919. The ILO is an international organization and a new social experimental institution trying to make the world conscious that world peace may be affected by the unjust conditions of its working population. It is like other international agencies such as the FAO or WHO working for the universal cause but differing from them in one aspect, namely, in its tripartite structure. Representation at all the proceedings of the ILO is given to workers and employers beside governmental agencies. This characteristic feature enables all three agencies to share in its control, supervision and execution of its policies and programmes. There are three groups namely, the Governments which finance it, the workers for whose benefit it is created and the employers who share the responsibility for the welfare of the workers.

19.2 OBJECTIVES OF THE ILO

The objectives of the ILO are enunciated in the preamble to its constitution supplemented by article 427 of the Peace Treaty of Versailles, 1919 as well as by the Philadelphia Declaration of 1944. The constitution of ILO as amended in 1944 reaffirms its purposes and declares,

- a. Labour is not a commodity,
- b. Poverty anywhere constitutes a danger to prosperity everywhere,
- c. Freedom of expression and of association are essential to sustained programmes,
- d. The war against want requires to be carried on with implementing vigor within the nation.

The Declaration of Philadelphia set forth 10 objectives which the ILO was to further and promote among the nations of the world. The theme underlying these objectives is social justice. The objectives are as follows,

- a. Full employment and the raising of standards of living,
- b. The employment of workers in the occupation in which they can have the satisfaction of giving the fullest measure of their skill, and make their contribution to the common well being,
- c. The provision, as means to the attainment of this end, and under adequate guarantees for all concerned, of facilities for training and the transfer of labour including migration for employment and settlement,

- d. Policies in regard to wages and earnings, bonus, and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of protection,
- e. The effective recognition of the right of collective bargaining, there cooperation of management and labour in the continuous improvement of productive efficiency and the collaboration of workers and employers in social and economic measures,
- f. The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care,
- g. Adequate protection for the life and health of workers in all occupations,
- h. Provision for child welfare and maternity protection,
- i. The provision of adequate nutrition, housing and facilities for recreation and culture,
- j. The assurance of equality of educational and vocational opportunity.

The ILO recognises that economic development must serve as a basis of social progress. ILO also considers that all possible steps must be taken by international regional, and national agencies to promote improvements in the fields of public health housing, nutrition, education, the welfare of children the status of woman, conditions of employment, the remuneration of wage earners and social security.

The ILO also aims at protecting migrant workers who must enjoy the same advantage as local workers. Minimum wages should be fixed where possible by collective agreement the payment of wages in cash or in kind must be regulated. Discrimination among worker on grounds of race, colour, sex, belief, trade union affiliation affecting any aspect of conditions of work should be abolished. General education and vocational training including instruction locally or abroad in new production technique must be developed and a school leaving age and minimum age for employment should be prescribed.

ILO also aims at abolition of slavery forced labour, control of opium traffic, and prohibition of opium smoking, minimum age for employment, protection of young person and woman at work, remuneration, health housing and social security establishment of labour inspector services, freedom of association, collective agreements and settlement of disputes. ILO also recommends minimum wage fixing machinery, protection of wages, equality of remuneration, occupational safety and health measures, workmen's compensation, regulation of working hours, weekly rest and holidays with pay, powers of labour inspectors and the information of workers and employers.

International Labour Organization make appropriate arrangements for the representatives of public international organisations, who can take up the specialized responsibilities. ILO believes that lasting peace can be established only if it is based on social justice.

19.3 ORGANISATION

The International Labour Conference, the Governing Body and International Labour Office are the three main organs through which the ILO performs its functions.

International labour conference

In the General Conference of the ILO there are 4 delegates from each member state out of which two are representatives of the government, one of the workers and the fourth one represents the employees. The government representatives put forth one the official line of their respective governments and all other members vote as individuals. Two thirds majority vote of the members is required for the adoption of any convention or recommendations. The International Labour Conference lays down the minimum international standards of working and living conditions. The conference approves the annual budget of the ILO. It also elects the members of the governing body. The reports of the member countries regarding the implementation of conventions and recommendations are examined by the International Labour Conference.

Except for the interruption caused by the Second World War, the International Labour Conference has continued, since its first session in 1919 to meet at least once a year. The Conference, assisted by the Governing Body, adopts biennial programme and budget, adopts International Labour Standards in the form of Conventions and Recommendations and provides a forum for discussing social economic and labour related issues. India has regularly and actively participated in the Conference through its tripartite delegations.

The Conference has so far had 4 Indian Presidents viz.. Sir. Atul Chatterjee (1927), Shri Jagjivan Ram, Minister for Labour (1950), Dr. Nagendra Singh, President, International Court of Justice (1970) and Shri Ravindra Verma, Minister of Labour and Parliamentary Affairs (1978). There have also been 8 Indian Vice Presidents of the International Labour Conference, 2 from the Government group, 3 from the Employers and 3 from the Workers group. Indians have chaired the important committees of the conferences like Committee of application of Standards, Selection Committee and Resolutions Committee.

Governing Body

The Governing Body is the executive organ of the ILO and consists of 4 members. The Chairman and Vice-Chairman are elected for one year. It decides the items for the agenda, appoints Director General and supervises the work of the secretariat. The general policy is determined by it and the proposals for the budget are also drafted by the Governing Body.

Since 1922 India has been holding a non-elective seat on the Governing Body as one of the 10 countries of chief industrial importance. Indian employers and workers representative have been elected as Members of the Governing Body from time to time.

Four Indians have so far been elected Chairman of the Governing Body. They are Sir Atul Chatterjee (1932-33), Shri Shamala Dharee Lall, Secretary, Ministry of Labour (1948-49), Shri S.T. Merani, Joint Secretary, Ministry of Labour and Shri. B.G. Deshmuk, Secretary, Ministry of Labour (1984-85).

The Governing Body of ILO functions through its various Committees. India is a member of all sub committees of the Governing Body viz (i) Programme, Planning and Administrative; (ii) Freedom of Association; (iii) Legal Issues and International Labour Standards; (iv) Employment and Social Policy; (V) Technical Cooperation and (vi) Sectoral and Technical Meetings and Related issues.

The International Labour Office

The Secretariat wing of the ILO is known as the International Labour Office, headed by the Director General. It brings out the periodical publications and prepares documents and authentic records. It has a group of experts and encourages research and studies on problems connected with labour.

The International Labour Office, Geneva provides the Secretariat for all conferences and other meetings and is responsible for the day-to-day implementation of decisions taken by the Conference. Governing Body etc. Indians have held positions of importance in the International Labour Office.

Functions of International Labour Conference, Governing Body and International Labour office of the ILO.

Functions of ILC

1. Formulates International Labour Standards
2. Fixes the amount of contributions by the member states.
3. Decides the expenditure budget estimates prepared by the Director General and Submitted to the Governing Body.
4. Makes amendments to the constitution subject to subsequent ratification of the amendments by the 2/3 member states including 5 of the 10 states of industrial importance.
5. Considers the report of the Director General giving labour problems and assists in their solution.
6. It appoints committees to deal with different matters during each session.
7. It is empowered to regulate its own procedures.
8. Selects once in 3 years members of the Governing Body.

9. Elects its Presidents.
10. Seek advisory opinion from the International Court of Justice.
11. Confirms the powers, functions and procedures of Regional Conference.

Functions of Governing Body

1. Coordinates work of the organisation.
2. Draws up an agenda for each session and subject to the decision of the International Labour Conference, decides what subject should be include in the agenda of the International Labour Conference.
3. Appoints the Director General of the Office.
4. Scrutinizes the budget.
5. It follows up the implementation by member states of the conventions and recommendations adopted by the conference.
6. It fixed the dates, duration and agenda of the Regional Conference.
7. It has the power to seek advisory opinions from the International Court of Justice with the consent of the International Labour Conference.

Functions of International Labour Office

1. To prepare documents on the items of the agenda of the Conference.
2. To assist Governments in framing legislation on the basis of the decisions of the ILC.
3. To carry out its function in connection with the observance of the conventions.
4. To bring out publications dealing with industrial labour problems of international interest.
5. To collect and distribute information of international labour and social problems.

The Purposes of the ILO

The following purposes of the ILO have been stated in every Art 2 of the *Philadelphia Declaration* :

1. Secure equal opportunity to all human beings irrespective of race, creed , or sex ;
2. To provide conditions for such developments,
3. To accept only those measures which promote this fundamental objective,
4. To examine and consider all international economic and financial policies and measures in the light of the above objective,
5. To make appropriate recommendations for the purpose.

19.4 FUNCTIONS OF THE ILO

The main objective of the ILO is to provide for social justice and the improvement of the life and living standards of the working people all over the world. For the fulfillment of the objective, the ILO performs the following functions :

1. Improving the standards of workers by building up a code of International Law practice
2. Prevention of unemployment and suggestions of adequate institutional arrangements for the purpose.
3. To look after the problem of social security of employees in industry, commerce and agriculture.
4. It has succeeded in regulating the working conditions of merchant sailors.
5. It champions the cause of workers to form their associations.

6. It takes steps to ensure that the industrial and field workers enjoy adequate safety.
7. It has made elaborate provisions for improving the conditions of women and children and takes special care for promoting their welfare.
8. Technical assistance is being provided to the members to speed up their development.

Impact of the ILO on the Indian Labour Scene :

The impact of the activities of the ILO Indian Labour scene is two fold. Firstly the ILO was the principle source for labour legislation in India through the ratification of the ILO standards. The principles of these standards are incorporated in o the existing labour laws. Secondly, the effect of 'Art.3 of the constitution of ILO provides for the nomination of government delegates and advisors to the international labour conference which is held every year is in furthering the process of organization among employers & workers in India.

One of the main functions of the labour conferece(ICC) the legislative wing of the ILO is to formulate international labour standards. The ILO provides forum for discussion on and deliberations of international labour problems and then formulates the standards in the form of convention and recommendations are collectively called as the international labour code.

19.5 ILO CONVENTIONS

The Birth of a Convention

The conventions that come into being are, the result of international agreement on a given subject. To illustrate this point, equal pay for men and women will serve as a good example. Equal pay was recognised as an objective of the ILO constitution. Following a request of the Economic and Social Council of the UN, in 1948, the Governing Body of the ILO decided to place the question on the agenda of the ILC. In choosing a question the Governing Body is guided by the wishes of governments, employers and workers organisations of the member states. It is helped in its decision by surveys of the law in different countries, compiled by the office. The ILC in considering a question seeks the views of the governments by means of detailed questionnaire. In the case of the issue of equal pay, there were two successive annual sessions of the ILC, the first reading covering the general principles and the second adopting the final text. In the deliberations of the ILC, workers and employers representatives participate on a basis of full equality with representatives of Governments. The proposed standards are considered, firstly, by a technical committee, which are adopted later, after acquiring a 2/3 majority, the combined labour and management votes equaling the Government votes.

One of the salient features of these standards is their flexibility. The ILO has as its members countries with varying degrees of industrialisation and a divergent social structure. The ILO constitution contains provisions designed to meet this difficulty. While framing the standards, the Conference is required

to keep factors like climatic conditions, industrial organisations, etc. in mind (Article 19.3 of the ILO Constitution). For example, the convention concerning minimum standards of social security permits ratification in respect of as few as 3 out of a list of 9 types of benefits (sickness, unemployment, old age etc.) and also enables less developed countries to avail themselves of certain temporary exemptions in regard to the proportion of protected persons, the duration of benefits, etc. Such flexibility clauses help in making the ILO's standards applicable to the less industrialized countries too.

The ILO passes conventions and recommendations of various labour problems and a variety of matters concerning labour laws, practices and social justice. A convention is adopted by the conference by the majority of 2/3 of government representatives. The convention so passed is submitted to the director general, who in turn communicates to the ILO. A convention shall be submitted to the national legislature for ratification. Ratification implies a formal commitment to apply the convention and willingness to accept international supervision of the legal measure.

The constitution of ILO required that the member nations shall make general report to the Director General about the measures taken to bring the convention before the competent authority. The governing body may request the member nations who have not ratified to report on the national law on the matter. The ILO supervision is done at two levels. Firstly, a committee of experts on the application of conventions and recommendations is constituted tripartite committee on the application of conventions & recommendations makes suggestions to the conference. Further a committee on freedom of association is constituted to examine individual complaints in this field. Since 1951 it has examined more than 1000 cases.

A member nation can complain about non-compliance of ILO conventions by another to the governing body. The governing body will appoint a commission of inquiry to inquire and report on the matter. Then inquiry report will be sent to the concerned member nation for compliance. If the report is not accepted by the member nation within 3 months it will be submitted to ICJ whose decision on the matter will be final. Trade union of employers or workers may also file petition to the governing body of ILO securing the effective observance of a convention within its jurisdiction. The government body will ask for explanations from the concerned member nation about the matter within three months. In case of non-compliance the matter may be published by the ILO to expose the labour policy of the member state.

An ILO convention is not a treaty but an instrument concerning rights and duties on signatories. It is in effect in the nature of a legislative bill or project or proposal for legislation which each member nation undertakes to lay before its own legislature for enactment and incorporation. The recommendations passed by ILO are next only to conventions. They set up standards of labour practices and specific guidelines to be followed by the member states. The member nations shall report the position in labour law and practice of their countries and progress made in the implementation of report or changes if needed. Thus, it is the binding character of conventions which distinguishes it from recommendation.

Conventions are international treaties and are instruments, which create legally binding obligations on the countries. Recommendations are non-binding and set out guidelines orienting national policies and actions.

International Labour Code

The main task of the ILO at the outset is to improve conditions of life and work by building up a comprehensive code of labour law and practice. The founders of the ILO felt that standards laid down through the joint efforts of government management and labour would be realistic, solid and widely applicable. The ILO has been constantly developing International Labour Code which at present consists of convention & recommendation on varying matters of labour problem of international labour community. Over 5000 of conventions have been registered. Several of its ratifications have been adhered to by the member nations in their labour laws and practices. Thus, the ILO has produced an international labour code containing international approved labour standard and practices applicable to all nations. In many cases they become binding upon members nations by reason of the ratification of conventions and adherence to recommendations. The ILO in the direction makes every member nation to devote attention on the international plane so as to adjust its national laws to achieve on international result. Such as for instance, a common labour standard and practice both conventions and recommendations provide a model and stimulus for national legislation and practice in member countries. This is a striking feature in the field of international labour.

19.6 RATIFICATION PROCEDURE OF ILO STANDARDS

The ILO standards are analogous to treaties requiring ratification competent national authority within a period of one year or 18 months at the latest from the closing session of the ILC. In India, the treaty making power is within the competence of government of India. The power to enact and implement legislation lies in the hands of the parliament. The Director General of ILO sends a certified copy of the convention, once it is born, to all member states. Since in India labour is in the concurrent list of the constitution, the government of India dispatches the convention to the state governments, to the Ministers of Labour of Union, as well as to the All-India Organisation of workers and employers inviting their views regarding the desirability and practicability of giving effect to these standards. A statement of action is drawn up, taking in to account the comments received is considered by the Union cabinet and is placed before parliament, where the proposals are discussed from all aspects. Copies of the statements are forwarded to the International Labour Office, the State Governments, and the workers, and the workers, and the workers, and employers, organization. Follow-up action, by way of ratification of conventions, is taken up subsequently.

19.7 INFLUENCE OF ILO RECOMMENDATIONS ON INDIAN LABOUR LEGISLATION

Being a founder member of ILO, the approach of India with regard to International Labour standards has always been positive. The ILO instruments have provided guidelines and useful framework for the evolution of legislative and administrative measures for the protection and advancement of the interest of labour. To that extent the influence of ILO conventions as a standard for reference for labour legislation in India, rather than as a legally binding norm, has been significant. Ratification of a convention imposes legally binding obligations on the country concerned and therefore India has been careful in ratifying conventions. It has always been the practice in India that we ratify a convention when we are fully satisfied that our laws and practices are in conformity with the relevant ILO convention. It is now considered that a better course of action is to proceed with progressive implementation of the standards, leave the formal ratification for consideration at a later stage when it becomes practicable. India so far ratified 39 conventions of the ILO, which is much better than the position obtaining in many other countries. Even where for special reasons, India may not be in a position to ratify a convention, India has generally voted in favour of the conventions reserving its position as far as its future ratification is concerned.

The Tripartite Committee of India was set up to draw up a programme of implementation of the ILO conventions. This committee makes a detailed scrutiny of the ILO instruments. It is on the recommendation of this committee that India ratifies conventions and recommendations. In case where the committee has not ratified a particular instrument, it focuses on the reasons for non-ratification.

Core conventions of the ILO: The eight Core Conventions of the ILO (also called fundamental/human rights conventions) are;

1. Forced Labour Convention (No.29)
2. Abolition of Forced Labour Convention (No. 105)
3. Equal Remuneration Convention (No.100)
4. Discrimination (Employment Occupation) Convention (No. 111)
(The above four have been ratified by India)
5. Freedom of Association and protection of right to organised convention (No.87)
6. Right to organize and collective bargaining convention (No.98)
7. Minimum Age Convention (No. 138)
9. Child labour convention (no. 182)
(These four are yet to be ratified by India)

Consequent to the World Summit for Social Development in 1995, the above mentioned Conventions (Sl. No. 1 to 7) were categorized as the Fundamental Human rights conventions or core conventions by the ILO. Later on, convention NO.182 was added to the list. As per the Declaration on Fundamental principles and Rights at work and its Follow-up, each member state of the ILO is expected to give effect to the principles contained in the core conventions of the ILO irrespective of whether or not the core conventions have been ratified by them.

ILO Area Office, New Delhi

An ILO Branch Office was set up in New Delhi in 1929. The work of the Branch Office consisted of collecting and disseminating information and maintaining links with the Government of India and the Organizations of Employers and workers and generally to publicise the work of ILO among the Indian audience. With the planned programme of decentralization, the Branch Office became an Area Office of ILO in 1970. The Area Office at New Delhi has been changing in its jurisdiction over the years. It now coordinates technical assistance activities in diverse focus as such as rural labour, woman workers, employment generation, occupation safety and health, population control, family welfare, etc. in India and Bhutan.

The ILO conventions and recommendations have had an influence on Indian labour legislation, on the following;

1. The ILO convention seeks to achieve early abolition of forced labour except in public services. The Indian response can be found in Art. 14,15 (i) 16 (i) and 23 of the constitution, and Bonded labour (Prohibition) Act 1976.
2. The ILO convention aims at full employment and raising of living standard, fullest use of labour resources and skill and training of workers .Art 39 (a) and 41 of the constitution, Apprenticeship Act, Employment Exchange (Notification of vocations) Act reflects the ILO efforts in India.
3. The convention aims at creation of machinery whereby minimum wage rates are fixed so that the wage earners are protected from undue exploitation. For agriculture workers also minimum wage shall be paid. Art. 43 of the constitution, Minimum wages Act 1948 and Payment wages Act reflect these policies.
4. Factory and mines legislation with regard to the aspects like hours of work, night work for women and young persons, weekly rest, etc., accordingly the relevant Act like Factories Act 1948 enforces the ILO conventions in this regard.
5. Practically, in every country child employment was in practice. They were paid very low wages and were subjected to long hours of work. Concerning employment of young persons (between 15 to 18 years) in factories, insistence on medical fitness, avoidance of hazardous work and night work were insisted by conventions. Factories Act 1948 and Mines Act have relevant provisions to support these objectives.

6. The conventions envisaged that women should be given benefits of 12 weeks of maternity leave with pay and medical expenses. Art 42 of the Employees State Insurance Act 1948 implemented these measures.
7. ILO has envisaged the need for international labour standards for prevention of industrial accidents by complying with safety requirement. Art 42, Art 39 (i), Factories Act Mines Act and Dock workers Act were tried to reflect this approach.
8. The ILO accepted equal remuneration convention to provide equal pay for equal work for both men and women. Art 38(d) and Equal Remuneration Act 1976 aims at implementation of these norms of ILO.
9. To prevent insecurity in the event of sickness, old age, invalidity, unemployment and death during work, the ILO has prescribed for employers duty to provide for social security measure. Art.42 and 42 of the constitution, Workmen Compensation Act and ESI act are made good attempt to implement these norms.
10. ILO conventions envisages about freedom of association, right to organize, make collective bargaining and protection of workers representations from pre judicial acts. The constitutional protection, protection under Industrial Dispute Act tries to implement these measures in India.

ILO and Child Labour

ILO's Interest in child labour, young persons and their problems is well known. It has adopted a number of Conventions and Recommendations in this regard. In India, within a framework of the Child Labour (Prohibition and Regulations) Act, 1986 and through the National Policy on Child Labour, ILO has funded the preparation of certain local and industry specific projects. In two major projects, viz. Child Labour Action and Support Programmes (CLASP) and International Programme on Elimination of Child Labour (IPEC), the ILO is playing a vital role.

The implementation of IPEC programmes in India has certainly created a very positive impact towards understanding the problem of child labour and in highlighting the need to eliminate child labour as expeditiously as possible. A major contribution of the IPEC programme in India is that it has generated a critical consciousness among all the 3 social partners for taking corrective measures to eliminate child labour.

On the whole ILO conventions and recommendations comprehended important social policies. India has an impressive record of compliance with these norms.

19.8 SUMMARY

It is due to the various works of the ILO and different regulatory provisions introduced by it, the workers of the world have developed a sense of solidarity. Although the ILO makes only suggestions

and recommendations and adopts resolutions in international conventions, yet the support of international public opinion behind these suggestions and resolutions create a binding effect. The ILO has been able to achieve for the working class what they did not get through the national channel. States which were usually hesitant to adopt progressive legislation and other methods for improving the conditions of the working class people, have now come forward to adopt most of the suggestions and proposals offered by the ILO.

The ILO's main contribution has been the development of agreed international standards comprising conventions and recommendations for national application. Perhaps ILO is the only organisation which has set the international standards in the field of industrial progress having aims of higher social and economical objectives in mind. The ILO standards have influence on Indian labour legislation. The ILO conventions have formed the sheet anchor of Indian labour legislation especially after 1947 when the Indian National Government assumed the office at the center and drew up a blue print on labour policy based on the ILO standards. The Directive Principles of state policy in Articles 39,41,42 and 43 of the constitution lays down policy objectives in the field of labour having close resemblance and influence to the ILO constitution and the Philadelphia charter of 1944. The activities of the ILO have influenced and strengthened labour, especially by helping the trade union movement gain momentum. Employers have also take note of its convention to introduce progressive measures for the working population. Thus the ILO both directly and indirectly has had a great influence on the Indian labour scene and labour legislation.

19.9 KEY WORDS

1. International Labour Conference : General Assembly of the ILO- meets every year in the month of June.
2. Governing Body : Executive Council of the ILO – meets three times in a year in the months of March, June and November.
3. International Labour Office : The International Labour Office, Geneva provides the Secretariat for all conferences and other meetings and is responsible for the day –to –day implementation of decisions taken by the conference and governing body.
4. Conventions ; Conventions are treaties and are instruments, which create legally binding obligations on the countries that ratify them.
5. Recommendations : Recommendations are non- binding and set out guidelines orienting national policies and actions.
6. ILO Standards : The ILO Standards are analogous to treaties requiring ratification from competent national authority within a specified period.

19.10 QUESTIONS

1. Elucidate the structure of ILO and the process of making and implementing conventions and recommendations.
2. Explain the content of ILO conventions and recommendations and how far they influences the Indian labour legislation ?
3. Write a note on the purposes and functions of ILO . How does ILO assisting the member nations to solve their labour problems ?
4. State the aims and objectives of ILO
5. Discuss the unique features of ILO in promoting human rights and social justice in industrial life.
6. Explain the objectives of labour legislation in India. How far were they realized of discuss.

19.11 BOOKS FOR REFERENCE

1. Labour and Industrial Law - S.N. Misra
2. Labour and Industrial Law - Pillai
3. Industrial Relations - Arun Monnappa
4. Hand book of labour laws - S. Krishnaswamy
5. Labour law and Industrial laws - Goswami



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